

**THE ABORTION CONTROVERSY 1936-77: A CASE
STUDY IN 'EMERGENCE OF LAW'.**

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The views and opinions expressed are, of course, the responsibility of the author alone.

Lorna J.F. Smith

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ABSTRACT

This study constitutes an empirical examination of the social, political and legal aspects of abortion law reform in the United Kingdom between 1936 and 1977. Three main legislative cycles are identified and, by a combination of description and analysis of processes over time, a full historical understanding of each is presented. This involves an examination of how abortion law became defined as problematic; the agitation for amelioration or eradication of the 'problem'; the identification of the protagonists involved, their motivation, goals and tactics; the ensuing legislative activity; and an assessment of the outcome. The detailed description provided by the case study is used to evaluate the applicability to abortion law reform of general theories which have been advanced to explain law emergence; conflict, pluralist and consensus theories. It suggests that different theories may be appropriate to different types of laws and that rather than adhering to a doctrinaire approach to law emergence it may be more useful to employ a notion of a continuum which would allow for such differentiation and also treat the concepts of conflicts and consensus as matters for investigation rather than assertion. The study examines particularly the legislative procedures and tactics involved in the passage of any new laws and argues that such an examination of these essential pre-conditions is not only helpful but essential to the formulation of any theory which purports to explain law emergence. The conclusion is one of scepticism as to the possibility of constructing adequate general theories of law emergence on the basis of individual empirical case studies.

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LIST OF ABBREVIATIONS USED

ALRA:	Abortion Law Reform Association
Birkett:	Interdepartmental Committee on Abortion 1937-39.
BCC:	Birth Control Campaign
BCOG:	British College of Obstetricians and Gynaecologists
BHA:	British Humanist Association
BMA:	British Medical Association
BMJ:	British Medical Journal
BPAS:	British Pregnancy Advisory Service
Co-ord:	Co-ordinating Committee in Defence of the 1967 Abortion Act
DHSS:	Department of Health and Social Security
GMC:	General Medical Council
Lane:	Committee of Inquiry into the Working of the 1967 Abortion Act
NAC:	National Abortion Campaign
NCCL:	National Council for Civil Liberties
NCW:	National Council of Women
NHS:	National Health Service
NOP:	National Opinion Polls
NUS:	National Union of Students
PAS:	Pregnancy Advisory Service
PRO:	Public Record Office
RCOG:	Royal College of Obstetricians and Gynaecologists
RCOP:	Royal College of Psychiatrists
RMPA:	Royal Medico-Psychological Association
RSPCA:	Royal Society for the Prevention of Cruelty to Animals

SPUC: Society for the Protection of Unborn Children
TUC: Trades Union Congress
WACC: Women's Abortion and Contraceptive Campaign
WCG: Women's Co-operative Guilds
WHO: World Health Organisation

INTRODUCTION

This study arose from a general interest in the way in which laws emerge in society and, in particular, why certain ways of acting are regarded either as criminal or as socially acceptable at any particular point in time, whether the factors giving rise to criminal designations remain constant over time and, if not, what factors are important in the changing viewpoints and definitions expressed in the criminal law. As such it forms a case study in a growing body of literature¹ which stresses the need to understand the philosophies underlying and the processes involved in the ascription of a criminal label to an area of behaviour or, indeed, the removal of that label in a process of decriminalisation.

The growth of this body of literature is of comparatively recent origin, the activities of criminologists having tended previously to focus largely upon studying criminal behaviour. That is not to say that observations have not been made that it is the definition of behaviour as criminal which gives the behaviour its criminal status and not the behaviour itself which is intrinsically criminal. Durkheim recognised that behaviour which is regarded as criminal varies from society

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1. See, among others: Becker, H.S.: *Outsiders: Studies in the Sociology of Deviance*, Free Press of Glencoe, New York, 1963; Chambliss, W.J.: *A Sociological Analysis of the Law of Vagrancy, Social Problems*, Vol.12 pp.66-77; Duster, Troy: *The Legislation of Morality; Law, Drugs and Moral Judgements*, The Free Press of Glencoe, New York, 1970; Gusfield, J.R.: *Symbolic Crusade: Status Politics and the American Temperance Movement*, University of Illinois Press, Urbana, 1963; Gunningham, N.: *Pollution, Social Interest and the Law*, Martin Robertson & Co., London, 1974; Paulus, I.: *The Search for Pure Food: A Sociology of Food Legislation in Britain*, Martin Robertson & Co., London, 1974; Platt, A.M.: *The Child Savers: The Invention of Delinquency*, University of Chicago Press, Chicago, 1969.

to society and from time to time;² Hall regarded the examination of the origin of legislation as a necessary part of criminological activity;³ Sutherland argued for the scientific analysis of the conditions under which criminal laws emerge.⁴ Nevertheless, on balance, it is fair to say that the content of the criminal law which determines the nature of officially recognised criminal behaviour has only comparatively recently become the object of systematic enquiry. This has meant that there has been a shift in emphasis away from asking who becomes criminal and why, when other individuals do not, towards first asking why and how certain areas of behaviour come to be labelled criminal whereas others do not. As Chambliss has stated:

If we are to explain crime, we must first explain the social forces that cause some acts₅ to be defined as criminal while other acts are not.

This shift in emphasis has led to the formulation of several general theoretical explanations of how law and especially criminal law emerges, which embrace different conceptions of the nature of society; conflict, pluralist and consensus models.

The present study examines a particular branch of criminal

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2. Durkheim, E.: *Professional Ethics and Civic Morals*. Translated by Spzott, W.S. and Brookfield, C., Routledge and Kegan Paul, London, 1957, esp. pp.110-120.
 3. Hall, J.: *General Principles of Criminal Law*, Bobbs-Merrill Co., Indianapolis, 1947, p.559.
 4. Sutherland, E.: *Principles of Criminology*, Lippincott, New York, 1960.
 5. Chambliss, W.J.: 'The State and Criminal Law', in Chambliss, W.J. and Mankoff, M. (eds.): *Whose Law? What Order?* John Wiley & Sons Inc., New York, 1976, p.102.

law, that governing abortion and its legal availability. It is normal in an introduction to attempt to answer the question - 'why did you do it?'. The answer which springs immediately to mind is that of the mountaineer - 'because it was there'. This is not as flippant as it might sound for when this study was started the Abortion Act 1967 had been in operation for only four years. It was a major piece of social legislation effecting certain changes in the law of the United Kingdom making for a very different approach to abortion than that prevailing in many western countries. Yet no objective, detailed, factual account and analysis existed which took into consideration the perceived root causes of the defined problem, the historical development of the struggle for reform, the nature and magnitude of the forces involved and their subsequent relative development. Nor had there been any attempt to relate these facts and activities to the general law-making framework. The 'history' of the struggle to pass the 1967 Abortion Act had been subject to only one substantial examination, that of Hindell and Simms, Abortion Law Reformed.⁶ They were activists in the pressure group advocating and securing legislative change; their examination is primarily a partisan account of the activities of one faction engaged in the struggle to pass the 1967 Act and as such it almost constitutes a semi-official biography of the movement to which they belonged and a vindication of its beliefs, aims, objectives and tactics.

6. Hindell, K. and Simms, M.: Abortion Law Reformed, Peter Owen, London, 1971.

It was suspected therefore that the 'story' might be incomplete, that facts important to the 'outside' researcher might well have been ignored or suppressed and that a full and fair account of the activities and motivations of the opponents of the statute could not be expected from such a work.

Furthermore, abortion had not ceased to be a controversial issue nor had it ceased to be the focus of law-making activity (nor indeed has there been any such cessation at the time of writing). As such it was clearly a case which demonstrated that the law is not static but that the passing of a piece of legislation is but part of an ongoing process and deserves to be examined as such. This present study is therefore an attempt to fill that existing void by providing an all-embracing description and analysis of the political history of abortion law reform which brings new facts to light and does not stop with the passage of the reforming Act, but is concerned with law making as a continuing activity. It examines the activities of all the major protagonists in the same manner and depth. Its principal concern is to produce an objective account of the political, historical, and social aspects of law-making in relation to abortion. The historical review of the development and outcome of the abortion controversy will however be followed by a discussion of those general theories of emergence of law mentioned in the opening paragraphs of this introduction, for the exposition of the socio-political history facilitates an

examining the workings of major political institutions. Sociologists' interest in law and law-making stems from the law being a major social phenomenon reflecting and/or regulating other major social institutions, relations and phenomena. This study recognises the contribution of such disciplines to a fuller understanding of law-making in its various aspects by drawing from such disciplines. It is hoped by so doing to demonstrate the inter-related nature of many of the issues in those disciplines, to show how their concerns impinge on one another and to show that reference to these concerns can provide a more comprehensive account than is otherwise possible of the impetus for legal change, the processes by which it is effected, and the subsequent developments of any change realised.

The study is principally concerned with the period 1936-77 and is divided into the main legislative cycles during those years. Chapter One examines the law in existence prior to the passage of the Abortion Act 1967 and analyses the content of that law in order to facilitate an examination and understanding of the pressure to bring about the 1967 Act and the legal changes effected by it. Chapter Two deals with the period between 1936 and 1961; it traces the early origins and underlying concerns of pressure for reform, identifies the opponents of such reform, describes the legislative attempts at reform, and assesses why there was no legislation passed at this time. Chapter Three examines the period between 1961 and

1967; it identifies the various groups involved in the struggle for the 1967 Act, their concerns and tactics and assesses their success or failure. The legislative attempts at reform culminating in the successful passage of the 1967 Act are examined and reasons are suggested why these attempts issued in success. The actual changes wrought in the law by the 1967 Act are analysed. Since one of the purposes of this study is to cast new light upon the history of abortion legislation, a detailed description of the debates in Parliament during the Silkin Bills and the passage of the 1967 Act has been omitted for this is very fully and adequately covered by Hindell and Simms.⁷ Consequently only the minimum has been presented here sufficient to carry the sense of the history and allow for analysis. Chapter Four covers the years between 1968 and 1974 and looks at developments arising from the passage of the 1967 Act, the intensification of the controversy on abortion, legislative activity and the findings of the Lane Committee. Chapter Five continues this examination of subsequent developments by describing the period 1975-77 and examines the changing nature of the abortion issue, its politicisation and new polarisation of pressure groups. Again it examines the legislative attempts to amend the 1967 Act and suggests why these attempts were unsuccessful. Chapter Six provides a review of existing general theories of emergence of law; conflict, consensus and pluralist theory,

7. Hindell, K. and Simms, M.: op.cit., chapters 6-9, pp.132-213.

and examines the institutional arrangements for law-making. It suggests the utility of the notion of a continuum in which to allow for differentiation of different types of laws, the need to treat the concepts of conflict and consensus as matters for investigation as well as the need to take into account actual parliamentary rules governing procedure and tactics. In addition, it examines four major works on abortion which touch upon the question of how and why the law relating thereto has changed, to discover if those accounts are implicitly underpinned by a particular theoretical model. Chapter Seven draws the thesis to its conclusion by dividing the study into three main legislative cycles and examining the theoretical issues involved. It assesses the applicability of these theoretical concerns and stresses the need for emergence studies to examine law-making procedures in practice in Parliament.

This study relies very heavily upon the private papers of the Abortion Law Reform Association (ALRA) and the Society for the Protection of Unborn Children (SPUC), full access to which was freely given. The ALRA papers contained Lord Silkin's and David Steel's private papers. In addition, open ended interviewing was conducted with all the key members of both organisations and considerable periods of time, approximately six to eight weeks, were spent between 1974 and 1975 working in both ALRA's and SPUC's offices where much valuable information was obtained through personal conversation and observation which

augmented the formal interviewing. The additional sources of data for the study were newspapers, medical journals, official reports of the main bodies concerned, for example, the medical profession and the churches, and Hansard.

The study therefore traces the history and development of the law as it stood before the passage of the Abortion Act 1967, reconstructs the enactment of that statute and studies ensuing developments. This constitutes an examination of the conditions which give rise to the making of new laws by identifying the individuals and groups involved who either advocate change or seek to retain old forms of control and thus the status quo. It examines the factors giving rise to their concern, their beliefs and motivations and how they translate those beliefs and concerns into action. It seeks to identify the types of influence and tactics they use to create a general awareness of the area they define as a problem and a particular awareness on the part of those who have the power to change or uphold the particular situation, the two not being unrelated. It attempts to place these individuals and/or groups within the larger social environment by reference to the prevailing climate of opinion at the various stages in the process and to evaluate the degree of support and/or opposition they experience. It looks at the outcome of the struggle for reform and assesses the degree of success and/or failure experienced.

It would appear axiomatic that what is defined as criminal behaviour is the result of a political process within which rules are formed which prohibit or require or allow people to act in certain ways. Criminal law is the formal embodiment of norms concerning the way in which people ought to behave and a statement of what will happen if they do not so behave. Every specific criminal law is the expression of a value or values and the question can be posed - 'whose values are embodied in the criminal law?'. This question is central to the general theories of law emergence to which, as was stated above, the historical account of the abortion controversy is related back. The purpose of this is not to construct a new theory of emergence of all law, or even of all criminal law, but to evaluate the applicability of those theories to this particular law and to use the empirical case study to suggest and develop a critique of emergence of law theories. The detailed description of the historical and political processes involved in abortion law reform is of course intended to have the greater weight in the thesis, the primary purpose of which is to provide a comprehensive account of the emergence of only one branch of the criminal law viz. that regulating the availability of legal abortion. But, in doing so, an opportunity is thereby created to subject the 'general' theories to the test of detailed empirical examination which, although a secondary concern, nevertheless provides some interesting and important implications for these theories and facilitates the development of a critique.

This study is rather different from most emergence of law

studies for it provides a detailed examination of the legislative procedures and tactics appropriate thereto in Parliament and a detailed description of those as they applied to all attempts to change abortion legislation. By paying such particular attention to these processes it is hoped that a fuller evaluation is achieved of the applicability and relevance of the general theoretical postulations advanced to explain how laws emerge.

In the critique which is developed it is suggested that these various theoretical positions, conflict, consensus and pluralism, attract so many caveats that their relevance may not be consistent in different areas of law or even between different types of law in the same general branch and that none is all powerful even where generally applicable. It is contended that differentiation must be allowed for between varying types of law, that the concepts of conflict and consensus must be treated as matters for investigation and not mere assertion. Moreover, writers interested in general theories have in the main ignored the simple fact that Parliament is the only body empowered to legislate and that there are recognised rules and procedures pertaining to the process of creating new laws. It is suggested therefore that relevant though the general theories may be to an understanding of emergence, an adequate explanation must encompass considerable reference to such rules and procedures and, moreover, that such reference will both illuminate and

enhance general theories.

The study is then both a descriptive and analytical exercise looking at processes over time. The description involved in the major part of the thesis is detailed but it is submitted that there is much truth in Rock's statement:

... it is evident that law can no longer be the subject of analyses which refuse to confront the issues ... The utility of minute description is made abundantly clear; ⁸ the utility of conventional models has become suspect.

Or, as a writer of another discipline, MacDonagh, has said in a slightly different context:

... unless the complex interaction of executive practice and legislation is specifically and exhaustively analysed ... our type of governmental dynamic can scarcely be disclosed.

The thesis constitutes an empirical case study. It is a further attempt to meet the demand made by, for example, Becker¹⁰ and Taylor¹¹ for such studies in order to overcome a problem which Becker has aptly described:

The most persistent difficulty ... is a lack of solid data, a paucity of facts and information on which to base our theories. I think it a truism to say that a theory that is not too closely tied to a wealth of facts about the subject it¹² proposes to explain is not likely to be very useful.

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8. Rock, P.: Introduction to Paulus, I. op.cit., p.13.
 9. MacDonagh, O.: A Pattern of Government Growth 1800-60, MacGibbon and Kee, London, 1961, p.9.
 10. Becker, H.S.: op.cit.
 11. Taylor, L.: Deviance and Society, Nelson, London, 1973, esp. pp.195-197, where Taylor argues that there is an unfortunate lack of specific accounts of the making of rules.
 12. Becker, H.S.: op.cit., p.165.

With a study on abortion it is perhaps necessary to answer the question - 'has it not been done before?' - for the issue's topicality and controversial nature has ensured that it is not a subject ignored by the mass media or indeed other researchers, so that the mistaken impression may be gained that there is little more to be said on the subject. But if I may return to my mountaineering analogy for a moment, the next question usually put to the mountaineer who replies 'because it was there' is normally - 'but hasn't it been climbed before?' - and the answer is often - 'yes, but I used a different approach'. This is also my answer to this question. The study not only contributes to our knowledge of abortion legislation by the discovery of certain new facts hitherto undisclosed in any description of the concerns, goals and tactics of the main battalions involved in the fight for legislative change and by covering a longer time span which allows for fuller examination (which is the primary concern). But by relating the empirical case study back to wider issues of law-making in general and by testing those wider general theories of emergence of law as they pertain to abortion law reform, it gives a different approach to the study of the subject matter. Moreover, the secondary purpose of the study viz. the evaluation of the applicability of general law-making theories facilitates the use of the empirical case study to produce some scepticism about the general theories which have so far been advanced and thereby contributes to our knowledge of these theoretical issues

by its inclusion of considerable reference to the concerns of political science viz. the societal and institutional arrangements for law-making which serve to suggest refinements of the 'general' theories of emergence of law.

It is perhaps worthwhile to expand briefly on the differences between this study and certain others on the same subject. A considerable number of articles have been written on abortion but most of these are brief descriptions of the various groups involved and have been descriptions situated in time rather than over time as in this study.¹³ More recently, articles have begun to be written on abortion from particular ideological standpoints, principally feminism and socialism.¹⁴ Of the books written on abortion with reference to aspects of law-making in the United Kingdom the principal ones are those of Hindell and Simms,¹⁵ Greenwood and Young,¹⁶ Pym,¹⁷ and Richards.¹⁸ The first has already been covered. Both Pym

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13. Typical examples are: Barr, John: *The Abortion Battle*, New Society, 9 March 1967; Turner, Jill: *The Battle of Abortion*, New Society, 11 March 1976.
 14. An example combining both is: Roberts, Cathy and Millar, Elaine: *Feminism, Socialism and Abortion*, *Women's Studies International Quarterly*, Vol.I, (1978) pp.3-14.
 15. Hindell, K. and Simms, M: op.cit.
 16. Greenwood, V. and Young, J.: *Abortion in Demand*, Pluto Press, London, 1976.
 17. Pym, Bridget: *Pressure Groups and the Permissive Society*, David and Charles, Newton Abbott (Devon), 1975.
 18. Richards, P.G.: *Parliament and Conscience*, Allen and Unwin, London, 1970.

and Richards deal only with events up to the passage of the 1967 Act and then abortion is not the sole focus of their works, but forms only a subordinate part. Pym's purpose is to examine the role played by many different pressure groups in effecting the controversial 'permissive' laws of the 1960s. Richards too examines abortion only with other examples of private members' legislation in order to explore the notion of 'conscience' in Parliamentary affairs. Greenwood and Young have written a rather different book. Where they fully concentrate on abortion law making in the United Kingdom they do so only in relation to the James White Bill in 1975, giving only a brief resumé of the passage of the 1967 Act. Their purpose is to write on abortion from a socialist perspective and by so doing to criticise and to expose the limits of reformism. The present study is rather different therefore both in the time-span it covers, its account of the socio/political factors involved in law making and by its whole approach and purpose.

One final point: such questions as 'is the foetus a human being?' and 'when does life begin?' are obviously crucial to moral judgements on the abortion issue but their consideration is not important to this study. The 'rightness' or 'wrongness' of abortion as a moral issue (whatever may be the basis of moral judgement) is immaterial to the nature of the study undertaken which is concerned with what the individuals and groups believe, and how they act on their beliefs, not with whether they are correct to hold such viewpoints.

A note on terminology

There exists a confusing array of terms used to describe the means whereby a pregnancy is terminated. Miscarriage and abortion might be thought to be synonymous; in various usages, however, the terms have different meanings. Lay people, as Hordern notes,¹⁹ tend to view the latter as carrying overtones of criminality. But in other usages the term abortion has different meanings. In medical terminology, abortion strictly signifies the expulsion of the products of gestation before the twenty-eighth week of pregnancy, i.e. before the foetus is viable. This may occur spontaneously or as a result of an accident ('miscarriage' being the popular term used in such circumstances) or by induction. But even within the medical profession specific distinctions are made by different individuals.²⁰ Thus, sometimes 'abortion' is applied to the first three months of pregnancy, 'miscarriage' for the period between three months and seven and 'premature birth' after the seventh month. In law, the concern of which is to regularise the incidence of 'induced abortion', abortion is the term used to describe any untimely delivery voluntarily procured with intent to destroy the foetus at any time before the natural birth of the child.²¹ It is in this sense that the term is used in this thesis, except where a different meaning is specifically indicated.

19. Hordern, A.: *Legal Abortion: The English Experience*, Pergamon Press, London, 1971, p.1.

20. Williams, Glanville: *The Sanctity of Life and the Criminal Law*, Faber and Faber, London, 1958, p.139, fn.1.

21. *Ibid.*, p.139.

CHAPTER ONE

THE LAW(S) REGULATING ABORTION IN THE UNITED KINGDOM

PRIOR TO 1967.

1. Introduction

No examination of the changes brought about by the legislation of 1967 regarding the availability of legal abortion or indeed the pressures which brought about that legislation can be made without an understanding of the law as it previously stood. That law was itself shaped by a number of historical influences. It did not solely derive, as might be assumed, from the ethical teachings of Christianity for these teachings were themselves influenced, to some degree, by the codes and practices of pre-Christian civilisations. Consequently, this chapter traces the various historical forces at work in defining the law in existence before 1967, and analyses the content of that law.

2. Historical perspective on abortion: pre-Christian societies¹

Abortion has been practised since the earliest recorded times and different civilisations have adopted different attitudes, at times condemning, condoning or permitting, its practice. Taussig notes that the earliest known abortifacient recipe is over 4,600 years old.² Studies by anthropologists working in Africa, Australasia and North America show how

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1. For a concise but informative account of the place of abortion in history see Appendix A of the Report of the Committee on the Working of the Abortion Act. Cmd. 5579. Vols. I, II & III, 1974, on which much of this section is based, hereinafter referred to as Lane or Lane Committee.
 2. Taussig, F.J.: Abortion: spontaneous and induced, Henry Kimpton, London, 1936, p.31.

widespread were the practices of abortion and particularly infanticide³ which were used generally for population control.⁴ Infanticide, Dickens⁵ suggests, was preferred as being less damaging to the mother and more selective with its victims generally being female and/or abnormal or deformed children. In view of their significance in relation to population growth, the practices of abortion and infanticide were discouraged whenever it was thought desirable to increase the population.

The history of abortion commissioned by the Lane Committee⁶ found the earliest surviving record of the law and practice in relation to abortion to be the Middle Assyrian Code, based on the Babylonian Code of Hammurabi. This decreed that 'a woman proved to have cast the fruit of her womb by her own act shall suffer impalement'.⁷ There appears to be no clear record of how Jews regarded abortion. One interpretation is that there was

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3. See e.g. Westerhaarck, E.: *Origin and Development of Moral Ideas*, 2nd edn., Vol.I., Macmillan, London, 1924, p.413 et seq.; Lecky, W.E.H.: *History of European Morals from Augustus to Charlemagne*, Vol.II, Longmans and Co., London, 1911, p.9 et seq.; Davies, D. Seaborne: *The Law of Abortion and Necessity*, *Modern Law Review* Vol.2. (1938), p.126 et seq.
 4. See e.g. Williams, Glanville: *The Sanctity of Life and the Criminal Law*, Faber and Faber, London, 1958, p.142 et seq.; Dickens, B.M.: *Abortion and the Law*, MacGibbon and Kee, London, 1966, p.11 et seq.
 5. Dickens, B.M.: op.cit., p.12.
 6. See Lane Report, op.cit., Appendix A.
 7. Driver, G.R. and Miles, J.C.: *The Assyrian Laws*, Clarendon Press, Oxford, 1935, p.117.

no specific penalty whereas another is that death could be the punishment. Abortion was severely punished by the ancient Egyptians yet the fact that many abortion procuring methods were known in that society suggests that its practice was widespread. The ancient Hindu code forbade abortion yet again there is evidence of many recipes and methods being used. Buddhism forbids all abortions. The ancient Chinese and Persians are known to have practised it but such evidence as exists is unclear as to whether its practice was legal.

In ancient Greece there are examples of abortion being positively commended as a means of population control. Although Hippocrates forbade physicians to administer abortive pessaries,⁸ Plato commended both infanticide and abortion. He recommended that imperfect children and those born of depraved citizens were to be killed and abortion ordered when, at the time of conception, the mother was older than forty years of age, or the father older than fifty five.⁹ Aristotle, whilst recommending that abortion should be legal as a means of limiting the size of the population in the interests of an economically healthy community, did so subject to the condition that the abortion should be procured before the foetus had quickened 'for the line between lawful and unlawful abortion will be marked by the fact of having sensation and being alive'.¹⁰

8. Adams, F.J.: *The Genuine Works of Hippocrates*, vol.2, Bailliere and Co., London, 1939, p.780.

9. Plato: *Respublica*, V, 460 and 461. Translated by Jowlett, B., Clarendon Press, Oxford, 1888.

10. Aristotle: *Politics*, VII, 1335b. Translated by Rackham, F., Heinemann, London, 1932.

The Romans appear to have practised abortion extensively. Social motivations for abortion were strong,¹¹ and included fear of disgrace (ending a pregnancy of a widow or avoiding a husband's discovery of adultery) and feminine vanity. In Roman law, a foetus was not regarded as a child and its destruction was not an offence against the criminal law but an 'extraordinarium crimen' which had nothing to do with the law against homicide but appears to be a wrong committed against a husband in depriving him of his children.¹² Justinian appears to have accepted Aristotle's distinction between abortion committed before or after quickening, regarding the latter as more serious. He set the date on which quickening was held to occur at forty and eighty days for the male and female foetus respectively, but this discrimination was not accepted by the glossators who settled on forty days for both sexes.

3. Christian Influences: Ecclesiastical Law¹³

Early Christian writers, most notably Tertullian, censured all abortion as virtual murder irrespective of what stage in the pregnancy abortion was performed,¹⁴ since it was held that the soul entered the body at the time of conception and the concern was to save an unbaptised soul from damnation. Formal

11. See Lane Report, Appendix A, op.cit., for a brief resumé of available literature.

12. Digest of Justinian 47, 11.4.

13. See Lane Report, Appendix A, op.cit.; Williams, Glanville, op.cit. pp.26-29 and 142-143; Dickens, B.M. op.cit. pp.15-20.

14. Tertullian.; Apologeticus, 9.8. Translated by Glover, F.R., Heinemann, London, 1931.

ecclesiastical legislation punishing the offence was enacted by the Council of Elvira (c.300 A.D.) in the West and by the Synod of Ancyra (c.314 A.D.) in the East. The former decreed that a woman guilty of abortion be refused Holy Communion, even on her death bed, and the latter ordered ten years penance. The Council of Lerida (324 A.D.) allowed the woman Holy Communion after seven years but in the eighth century Pope Gregory III reverted to ten years penance.

The Greek and Roman distinction between abortion before and after quickening was raised by Saint Augustine in the fifth century. He distinguished between an 'embryo informatus' which was unendowed with a soul and an 'embryo formatus' which had been so endowed. Abortion of the former was regarded as merely an act preventing life coming into being and punishable only by a fine whereas abortion of the latter was murder of an animated being and punishable by death. This distinction was upheld by the Council of Worms (868 A.D.) and sometime later, between the thirteenth and the sixteenth centuries,¹⁵ passed into the ecclesiastical law. Excommunication was the penalty for abortion of a quickened foetus but not for one unquickened; quickening was set firstly at forty and eighty days for male and female respectively although later changed to forty days for both. In the sixteenth century, this distinction was abolished and abortion once more decreed to be

15. Williams, Glanville: op.cit. pp.142-143.

homicide whether the foetus was animated or not. It was revived later in the same century before being finally abandoned by Pius IX in 1869.

4. Ecclesiastical law in England

References to laws regulating abortion in early English history are rare, so much so that it has been commented that 'abortion is evidently a crime without much recorded or reported history'.¹⁶ Both Williams and Dickens attribute the earliest mention of abortion in English law to the Leges Henrici Primi, a compilation of Anglo-Saxon laws attributed to the reign of Henry I from which it appears that abortion was then punishable only by religious penalties. This law penalised both the woman and anyone aiding her and drew the distinction between abortion performed before and after forty days gestation:

Women who have illicit intercourse and destroy their unborn children, and those who help them expel the foetus from the womb are expelled from the Church for their lives by an old ruling, but not it is more leniently laid down that they should do penance for ten years. If a woman deliberately got rid of her foetus within forty days, she must do penance for four years; if it was done after it was alive, because it amounts to homicide, she must do penance for seven years.¹⁷

After the Norman Conquest and the more rigid separation of secular and ecclesiastical courts, abortion remained almost exclusively the concern of the latter, the offence being the denial of the prospect of eternal life to the soul of the unborn, and so

16. Davies, D. Seaborne: op.cit., p.126.

17. Thorpe, B.: Ancient Laws and Institutes of England, (Record Commission 1840).

unbaptised, child.¹⁸ In the Middle Ages treatment of abortion became more severe; guilty women were condemned on a capital charge. A distinction too was drawn during this time between the woman and a third party aiding the abortion, the latter being tried before regional customary courts and being treated more severely.

5. The common law in England and Wales

References to abortion by the institutional writers are scarce, probably because the offence was generally dealt with in the ecclesiastical courts. Bracton, writing in the early part of the thirteenth century, said that abortion after quickening was homicide.¹⁹ Later authorities, however, do not share this view. Coke describes abortion as a 'great misprision' but not murder or manslaughter because a foetus, even though quickened, is not in rerum natura;²⁰ Hawkins agreed, though he described abortion of a quick child as a common law misdemeanour.²¹ Blackstone suggests that although the law in Bracton's time may have treated the abortion of a quickened foetus as manslaughter this was no longer so and he translates Coke's 'great misprision' as a 'heinous misdemeanour'.²² Dickens sees this translation as a contemporary evaluation of the crime

18. Dickens, B.M.: op.cit., p.19.

19. Bracton, Henry de: Book III (De Corona), fol.121.

20. Coke, Sir Edward: Institutes of the Laws of England, Third Part, p.50, 4th edn. A. Crooke, London, 1699.

21. Hawkins, William: Pleas of the Crown, 1.3.16, 7th edn. by Thomas Leach Robinson, London, 1795.

22. Blackstone, Sir William: Commentaries on the Laws of England, vol.I, p.129, adapted by R.M.Kerr, London, 1857.

of abortion, of its having ceased to be regarded as almost a capital offence or even close thereto.²³ He notes:

The Commentaries on the Laws of England were written by Blackstone for the lay public, and one may suppose that they were intended to be read according to the common usage, by which misdemeanours were "smaller faults and omissions of less consequence".²⁴

In brief, the position at common law appears to have been that abortion performed before quickening was not against the law but was so after quickening; both the woman and any third party aiding were punishable although the seriousness of the offence diminished over time and it was generally regarded as a matter for the ecclesiastical courts.

6. Statute law in England and Wales

It was not until 1803 that abortion was regulated by statute in England and Wales and tried by the criminal courts. Mannheim notes that this was 'remarkably late for a country which, at that time, possessed already a very elaborate system of statutory offences'.²⁵

(i) Lord Ellenborough's Act of 1803²⁶

This Act made the procuring of abortion a felony and abolished the common law rule that the unlawful act of abortion came only after quickening although the distinction was retained in one sense in that abortion performed before quickening was

23. Dickens, B.M.: op.cit., p.21.

24. Ibid., p.22.

25. Mannheim, H.: Criminal Justice and Social Reconstruction, Kegan Paul, London, 1946, p.43.

26. 43 Geo.III Ch.58.

punished less severely. The reason for placing abortion on a statutory basis is given in the preamble as being:

certain ... heinous offences, committed with intent to destroy the Lives of His Majesty's Subjects by Poison, or with intent to procure miscarriage of Women ... have been of late so frequently committed; but no adequate means have been hitherto provided for the Prevention and Punishment of such offences.

Section 1 of Lord Ellenborough's 1803 Act provides:

That if any Person or Persons ... shall wilfully, maliciously and unlawfully administer to, or cause to be administered to or taken by any of His Majesty's Subjects, any deadly Poison or other noxious and destructive Substance or Thing, with Intent ... thereby to cause and procure the Miscarriage of any Woman then being quick with child ... then and in every such case the Person or Persons so offending, their Counsellors, Aiders and Abettors, knowing of any privy to such Offence, shall be and are hereby declared to be Felons and shall suffer Death.

Section 2 draws the distinction between abortion performed before and after quickening, making abortion before quickening also a felony, a more restrictive position than the common law position, but punishing it less severely than abortions after quickening. Both Williams²⁷ and Dickens²⁸ note that, in practical terms, this provision is significant as having far more widespread application than the other since nearly all women who procure their own abortion do so in the early stages of pregnancy before quickening occurs. Section 2 of the 1803 Act provides:

And whereas it may sometimes happen that Poison or some other Noxious and destructive Substance or Thing may be given or other means used, with intent to procure Miscarriage or Abortion where the Woman may not be quick with Child at the Time, or it may not be proved that the

27. Williams, Glanville: op.cit., p.144.

28. Dickens, B.M.: op.cit., p.24.

Woman was quick with Child, be it therefore enacted, that if any person or Persons ... shall wilfully and maliciously administer to, or cause to be administered to, or taken by any Woman, any Medicines, Drugs, or other Substances or Thing whatsoever, or shall use or employ, or cause or procure to be used or employed, any Instrument or other Means whatsoever, with Intent thereby to cause or procure the Miscarriage of any Woman not being, or not being proved to be with Child at the time of administering such things or using such Means that this shall be felonious and punishable with fine, imprisonment, whipping or transportation for up to fourteen years.

It is unclear in s.1 of the Act whether a woman could be found guilty of procuring her own abortion although this seems likely and is consistent with the position at common law.²⁹ In another respect s.1 may have been more restricted than the common law in that no mention is made of abortion being illegal if procured by instrument, manipulation or exercise.

(ii) Lord Lansdowne's Act of 1828³⁰

The 1803 Act was repealed by Lord Lansdowne's Act of 1828 which did not clarify whether a woman could be found guilty of procuring her own abortion, but made it illegal to induce abortion by use of instruments (in addition to the other means specified in the earlier Act). This Act preserved the ecclesiastical distinction of before and after quickening with respect to the nature of the punishment imposed; death being the penalty imposed for abortion performed after quickening and imprisonment, transportation or whipping for abortions performed before quickening. It was also made a felony to 'counsel, aid or abet' any offender.³¹

29. Ibid., p.24.

30. 9 Geo. IV Ch.31.

31. 9 Geo. IV Ch.31 s.8.

(iii) The Offences Against the Person Act 1837³²

The next instance of legislative action is to be found in the Offences Against the Person Act 1837. This Act abandoned the ecclesiastical and common law distinction of quickening and also abolished the death penalty for abortion, the punishment being transportation or imprisonment. It is noteworthy that this Act did not distinguish between the woman who was pregnant and the one who was not. Again there is no express reference to a woman procuring her own abortion but Dickens is of the opinion that there can be no doubt that the Act was intended and understood to include her within its ambit.³³ This Act did use the word 'unlawfully' with respect to procuring abortion whereas the 1803 Act had used 'wilfully, maliciously and unlawfully' to characterise abortions performed after quickening and 'wilfully and maliciously' before quickening and the 1828 Act had used 'wilfully and maliciously' for both. Whether this characterisation was intended to have any meaningful or distinctive purpose is impossible to say. Dickens thinks it may have been so intended but admits that the point is 'elusive'.³⁴ Nevertheless, the use of the word 'unlawfully' in relation to abortion was to assume great importance in later years by its implication that there might be some circumstances in which abortion could be lawful. Indeed, in 1846

32. 7 Will. IV and I Vict. Ch.85.

33. Dickens, B.M.: op.cit., p.27.

34. Ibid., p.28.

the Criminal Law Commissioners³⁵ suggested that the 1837 Act be amended to contain the proviso that:

Provided that no act specified in the last preceding Article shall be punishable when such act is done in good faith with the intention of saving the life of the mother whose miscarriage is intended to be procured.

They stated:

This proviso seems expedient: it is contained in other codes, but does not appear to have been adverted to in our treatises.

In the event, the Commissioners' suggestion was never taken up with respect to abortion.

Section 6 of the Offences Against the Person Act, 1837³⁶ reads:

That whosoever, with Intent to procure the Miscarriage of any Woman, shall unlawfully administer to her or cause to be taken by her any Poison or other noxious Thing, or shall unlawfully use any Instrument or other Means whatsoever with the like Intent, shall be guilty of a Felony.

(iv) The Offences Against the Person Act 1861³⁷

Section 58 of the 1861 Act for the first time made it expressly clear that a woman could be found guilty of procuring her own abortion. In such cases it was necessary that she be shown to be pregnant whereas, in the case of third parties, it was immaterial whether or not she was pregnant. As in the 1837 Act,³⁸ the word 'unlawfully' is used and the use of 'poisons, other noxious things, instruments or other means whatsoever' is proscribed. It reads:

35. British Parliamentary Papers - Reports, Commissioners, 1846, 24, 42 (Art 16).

36. 7 Will. IV and I Vict. Ch.85.

37. 24 and 25 Vict. Ch.100.

38. 7 Will. IV and I Vict. Ch.85.

Every Woman, being with Child, who, with Intent to procure her own Miscarriage, shall unlawfully administer to herself any Poison or other noxious Thing, or shall unlawfully use any Instrument or other means whatsoever with the like Intent and whosoever, with Intent to procure the Miscarriage of any Woman whether she be or be not with Child, shall unlawfully administer to her or cause to be taken by her any Poison or other noxious Thing, or shall unlawfully use any Instrument or other means whatsoever with the like Intent, shall be guilty of Felony.

It was decreed that the punishment of

... those convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life, or for any Term not less than Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without³⁹ Hard Labour, and with or without Solitary Confinement.

These penalties were changed over time. The Statute Law Revision Act 1892⁴⁰ repealed the words 'or for any Term not less than Three Years' relating to penal servitude and 'for any Term not exceeding Two Years, with or without Hard Labour' relating to imprisonment. In 1893 the Statute Law Revision (Number 2) Act⁴¹ repealed the provisions regarding solitary confinement leaving the punishment as liability to penal servitude for life. The Criminal Justice Act of 1948⁴² abolished penal servitude and the offence became punishable with (as maximum) imprisonment for life but Williams⁴³ records that in practice, nothing near the maximum is imposed.

39. s.58. Offences Against the Person Act 1861.

40. 55 and 56 Vict. Ch.19.

41. 56 and 57 Vict. Ch.54.

42. 11 and 12 Geo.VI. Ch.58.

43. Williams, Glanville: op.cit., p.145.

The Offences Against the Person Act 1861 created, in s.59, a new offence of supplying or procuring poison etc., knowing it is to be unlawfully used with intent to procure abortion. This offence is a misdemeanour. The Act reads:

Whosoever shall unlawfully supply or procure any Poison or other noxious Thing, or any Instrument or Thing, whatsoever, knowing that the same is intended to be unlawfully used or employed with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall be guilty of a misdemeanour.

The punishment provided:

... and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for the term of Three Years, or to be imprisoned for any term not exceeding Two Years, with or without Hard Labour.

The Penal Servitude Act 1891,⁴⁴ s.1, gave the court a discretion of imposing a sentence of imprisonment for not less than three nor more than five years and when penal servitude was abolished by the Criminal Justice Act 1948⁴⁵ the maximum sentence became five years imprisonment.

(v) The Infant Life Preservation Act 1929⁴⁶

This statute created a new offence of child destruction, closely allied to abortion since the latter can occur at any point during a pregnancy before the child has a separate existence. It is still regarded, in law, as abortion when a

44. 54 and 55 Vict. Ch.69.

45. 11 and 12 Geo.IV Ch.58.

46. 19 and 20 Geo.V. Ch.34.

viable foetus is involved. Section 1(1) of the 1929 Act provides:

... any person who, with intent to destroy the life of a child capable of being born alive, by a wilful act causes the child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction.

and s.1(2) reads:

... for the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of twenty eight weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.

The allied nature of the two offences of abortion and child destruction is recognised by the 1929 Act, for ss. 2(2) and 2(3) allow a jury finding an accused person not guilty of any offence under s.58 of the Offences Against the Person Act 1861 to return a verdict of guilty of the alternative offence of child destruction, and vice versa. The importance of the 1929 Act with regard to the law of abortion, however, lies in its inclusion of the proviso suggested by the Criminal Law Commissioners in 1846 for the law of abortion viz.:

provided no person shall be found guilty of an offence under this section (1(1)) unless it is proved that the Act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

and the later use of this proviso by Mr. Justice Macnaghten in Rex v. Bourne.⁴⁷ In 1929, however, no exception to the law of abortion was made by the insertion of an amendment to the Offences Against the Person Act 1861 so that statute law prohibited (or appeared to prohibit) all abortion.

47. Rex v. Bourne [1939] 1 K.B. 687, [1938] 3 All England Reports 615.

7. Range of criminality under statute law

A wide range of persons could find themselves criminally accused. A woman could be charged with procuring her own abortion only if it could be shown she was pregnant. But a non-pregnant woman could equally find herself charged with conspiracy or of aiding and abetting if she agreed with others to administer drugs or use instruments with the intention of terminating the pregnancy. Persons supplying drugs etc., knowing they were to be used with intent to procure abortion were also liable for prosecution. Third parties could be accused of procuring abortion, whether or not the woman was pregnant, and irrespective of the status of the third party, no distinction being made in law between the unskilled or backstreet operator and the qualified medical practitioner. Nor did statute law allow for consideration of motivation or the particular circumstances of individual cases so that no exceptions were made for therapeutic abortions.

8. Case law in England and Wales

Dickens in his study of Abortion and the Law⁴⁸ provides extensive coverage of the important case law stemming from the interpretation of statutes regulating abortion. In particular he examines numerous cases stemming from the provisions of the Offences Against the Person Act 1861 which provide detailed

48. Dickens, B.M.: op.cit. See especially pp. 26, 31-36, and 62-72.

clarification of the meaning of its terminology and provisions. Discussion of case law here will be limited therefore to the case which made an important and far-reaching change in the law by permitting an exemption to be made in some cases for therapeutic abortion, Rex v. Bourne,⁴⁹ and to two subsequent unreported cases⁵⁰ which followed the reasoning of that case.

(i) Rex v. Bourne

The events leading to the case of Rex v. Bourne were as follows. A fourteen year old girl was so violently raped by a number of Guardsmen after she had accepted an invitation to see a horse with a green tail that she was taken to St. Thomas' Hospital where she came to the notice of Dr. Joan Malleon, a member of ALRA. Dr. Malleon asked a fellow ALRA member, Mr. Alec Bourne, a leading gynaecologist and obstetrician, to admit the girl to his wards for observation with a view to terminating the pregnancy. Bourne agreed and wrote to Malleon:⁵¹

... I have done this [operation] before and have not the slightest hesitation in doing it again ... I have said that the next time I have the opportunity I would write to the Attorney-General and invite him to take action.

This has been generally interpreted as meaning that Bourne himself indeed reported the operation to make it a test case.⁵² Although

49. Rex v. Bourne [1939] 1 K.B. 687, [1938] 3 All E.R. 615.

50. Rex v. Bergmann and Ferguson: Unreported, but see 1948 (1)B.M.J. 1008 and Williams, Glanville: op.cit. p.154, who quotes the official transcript; Rex v. Newton and Stungo, unreported, but see 1958 Criminal Law Review, 469.

51. Bourne, A.: A Doctor's Creed, Victor Gollancz, London, 1962, p.98.

52. See, for example, Williams, Glanville: op.cit., p.151; Dickens, B.M.: op.cit., p.38; Richards, P.G.: op.cit., p.87.

Bourne leaves that impression in his autobiography,⁵³ The Times report of the case⁵⁴ states that Bourne promised the girl's parents to keep the abortion secret and the Attorney-General is reported as making clear in court that although the case was brought to his notice, it was not Bourne who had done so. It is perhaps possible that the operation was reported by Joan Malleson.

Before performing the abortion, Bourne kept the girl under observation for eight days until he was satisfied of her state of mind and bearing. He wrote later that this was necessary:⁵⁵

... to be sure of the type of girl I was dealing with. Many of the prostitute type and those of low intelligence are completely untroubled by pregnancy, except for the first of these groups it is a nuisance but nothing more. The mentally retarded girl is usually, if not always, entirely indifferent to her condition. Abortion for her is quite unnecessary for any physical or mental considerations and also because if it is done it is highly probable that she will soon become pregnant again ... In her [the girl] there was nothing of the cold indifference of the prostitute.

On the day of the operation, but after it was performed, Bourne recalls that he was visited by two policemen who wanted him to give evidence as a witness against the Guardsmen. They advised him that under no circumstances could an operation be countenanced on humanitarian grounds. To this Bourne replied that the abortion was done and that he 'did not recognise his [the policeman's] right to dictate to me what I, as a surgeon, should or should not

53. Bourne, A.: op.cit.

54. The Times, July 19th 1938.

55. Bourne, A.: op.cit., p.98.

decide to do in the best interest of my patient, that I did not understand what he meant by "humanitarian grounds" as most of medicine is humanitarian'.⁵⁶ Bourne appeared firstly on a summons at the magistrates' court⁵⁷ charged that he:

on June 14th at St. Mary's Hospital, with intent to procure a miscarriage of a woman did unlawfully use an instrument contrary to s.58 of the Offences Against the Person Act 1861.

The agent for the Director of Public Prosecutions said that:

Although the law of this country does not specifically recognise any interference in pregnancy as justifiable, it appears, on such authorities as I have been able to find, that to procure a miscarriage is considered permissible on two grounds:

1. where it is necessary to save the life of the mother
 2. where it is necessary to save the life of the child
- Apparently it is not permissible in the present state of the law in any other circumstances whatsoever - not for family honour or any other ethical reason.

He maintained that Bourne had openly defied the law in order to ventilate his opinion that the law ought to be changed. In reply, the defence argued that Parliament intended in certain circumstances that such a use should be lawful, and that this constituted such a lawful instance. Bourne was sent to the Central Criminal Court for trial on indictment where he appeared on 18 July 1938.

There he was accused of having committed an offence against s.58 of the Offences Against the Person Act 1861, in that he used an instrument upon a female with intent to procure her miscarriage. No mention was made of his having 'unlawfully' used such an

56. Bourne, A.: op.cit., p.99.

57. See report in The Times, July 2nd 1938.

instrument and the indictment was challenged by the defence on this ground. Defence counsel stated that the indictment implied that abortion was always unlawful but that he understood that it was conceded by the Attorney General that abortion was lawful, if undertaken to save the life of the pregnant mother and the defence intended to argue on the word 'unlawfully'.⁵⁸ This point was conceded by the Attorney General who agreed that 'the case may well hang on the construction of the word unlawfully'.⁵⁹ Macnaghten J. ruled that the word be inserted in the indictment for, in order to constitute an offence, the Crown had to prove that the defendant had unlawfully used an instrument and not merely that he had used one.

The Attorney-General, before calling evidence, said:

Might I just make this brief submission or admission - viz. that on the construction of these statutes, if it were necessary in order to save the life of the mother to use an instrument to procure a miscarriage I shall not submit that it would be an offence under this section.⁶⁰

He went on to argue that Bourne had not operated with a view of saving the girl's life but because he thought that continuance of the pregnancy would adversely affect her mental and physical health and so had broken the law. Moreover, the offence was deliberate in that Bourne knew that the law prohibiting abortion did not allow exemption on the grounds of saving women from

58. Report of case in The Times, July 19th 1938.

59. Ibid.

60. Ibid.

mental ill-health. He had proceeded with a view to engineering a test case in order to publicise his views and hopefully to change the law. The Attorney-General called no medical experts to substantiate his view that there was a fundamental difference between life and health.

The defence countered by stating that Bourne was not seeking to alter or extend the law, nor to be acquitted on sympathetic grounds. He believed what he did to be lawful, a view supported by many of his medical colleagues, and he wanted a clear declaration by a court of the legality of his actions. The defence cited the Infant Life Preservation Act 1929 which allowed a viable foetus to be destroyed in order to save the life of the mother. The difference in this case, it was argued, was that the girl was at an early stage in pregnancy but that destruction of the foetus was necessary in order to save the mother's mental health and, since life depends on health, thus to save her life.

Several eminent medical men were called to give evidence on Bourne's behalf including Lord Horder, Dr. J.R. Rees, a psychiatrist, and Mr. William Gilliat, a senior gynaecologist at King's College Hospital. The principal argument, the defence alleged, was that the use of the word 'unlawfully' implied that the legislature had intended that in some circumstances abortion was lawful. The proviso in the Infant Life Preservation Act 1929 could, by analogy, suggest just such circumstances viz. that it was lawful to save the mother's life

and, since life depended on health, abortion was lawful in this case to save the mother's mental health for, as Mr. Rees put it, 'surely it can be claimed that a serious mental breakdown is tantamount to mental death'.⁶¹

In his summing up, the judge expressly stated that in his opinion the word 'unlawfully' was not a meaningless word, and the meaning he read into it was of vital and decisive significance in this case, and to the law as it was thereafter interpreted. The definition of legality he adopted was drawn from the Infant Life Preservation Act 1929 i.e. that abortion was not unlawful if carried out in good faith with the purpose only of preserving the life of the mother. This, in his view, was in accordance with 'what has always been the common law of England'.⁶² His direction to the jury was that the burden rested with the Crown of proving beyond reasonable doubt that the defendant did not procure the miscarriage of the girl in good faith for the purpose= only of preserving her health. It did not lie with the defendant to prove that he had acted in good faith to preserve the life of the girl. Macnaghten J. is also reported as saying that the unborn child must not be destroyed 'except for the purpose of preserving the yet more precious life of the mother',⁶³ but this does not appear in the Law Reports, which judges have the right to peruse before publication, and to 'correct' if

61. Quoted in Bourne, A.: op.cit., p.102.

62. [1939] 1 K.B. at 691.

63. [1938] 3 All E.R. at 620 and report in The Times, July 19th 1938.

necessary. He also distinguished, obiter, what in his opinion was not lawful, stating that the desire of a woman to be relieved of her pregnancy was no justification for performing the operation; nor was it the law, as some people said on religious grounds, that abortion should not be performed under any circumstances. Indeed, he suggested that a doctor refusing to perform an abortion on a woman who later died as a result could find himself charged with manslaughter by negligence.

In discussing what was meant by 'for the purpose of preserving the life of the mother' Macnaghten J. said that:

It was not contended that those words meant merely for the purpose of saving the mother from instant death; life depended on health and it may be that health is so gravely impaired that death results.

He rejected the defence plea that a 'wide and liberal' interpretation be placed on these words and hoped instead that a 'reasonable' view be taken. His 'reasonable' construction was that:

If a doctor is of the opinion on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under these circumstances and in that honest belief, operates is operating⁶⁴ for the purpose of preserving the life of the mother.

Before discussing lawful abortion, the judge began his summing up by distinguishing this case from that of the ordinary back street abortion. The jury was told that the present case concerned a man of:

64. [1939] 1 K.B. at 694.

The highest skill [who] openly in one of our great hospitals, performs the operation ... as an act of charity, without fee or reward, and unquestionably believing that he was doing the right thing, and that he ought, in the performance of his duty as a member of a profession devoted to the alleviation of human suffering, to do it.⁶⁵

He returned to this theme at the conclusion of his summing up by observing:

... it does not touch the case of the professional abortionist. As far as members of the medical profession are concerned - and they alone could properly perform such an operation - we may hope and expect that none of them would ever lend themselves to the malpractices of professional abortionists, and in cases of this sort, as Mr. Bourne said, no doctor would venture to operate except after consulting some other member of the profession of high standing.⁶⁶

Bourne was acquitted, and a Times leader commented:

The state of the law as ascertained by this case is very much what common sense would at any time have supposed it to be - so much so in fact that it remains a mystery why⁶⁷ this case should have been necessary to establish it.

Macnaghten J's interpretation of the word 'unlawfully' in the 1861 Act, his view that the legislature had implied lawful exceptions to the general law and, indeed, his view that his interpretation was only 'what the common law had always been' may all be questioned. The 1803 Act had used the words 'wilfully, maliciously and unlawfully' if the woman was quick with child and 'wilfully and maliciously' if she was not; the 1828 Act had used 'unlawfully and maliciously' in either case; the 1837 Act first used the sole condition of 'unlawfully'. These changes may simply reflect a change in

65. [1939] 1 K.B. at 690.

66. Ibid. at 695.

67. The Times, July 20th 1938.

style of draftsmanship rather than different requirements in the nature of the Act. It is true that the Criminal Law Commissioners in 1846 had suggested that a proviso be added to the relevant legislation which, if adopted, would have made abortion lawful when performed out of necessity to preserve the life of the mother but this proviso was not adopted when the 1861 Act was drawn up, and it was not until 1929 that such a proviso found its way into the law and then not into the law regulating abortion but into the Infant Life Preservation Act 1929 relating to child destruction. Moreover, there had been no legal definition of, nor judicial discussion expressly about, circumstances in which abortion could be deliberately and lawfully procured. Our conclusion must be that this case brought about a great change in the law by judicial 'declaraction'.

The case established the legality of abortion when done to preserve the life of the mother and extended the concept of life to include both physical and mental health. It is physical and mental considerations which are important and not the circumstances in which the pregnancy was caused; legal abortion was settled as being justified when childbirth would endanger a woman's life or cause such harm to her health that her life was endangered thereby either in quality or length. The danger to health must then be of considerable seriousness. Moreover, the case was not intended to apply to abortions carried out by anyone other than a medical practitioner who formed an opinion in good faith that the operation was so

necessary. It is not necessary that that opinion be correct, no objective standards are applicable, only that it was formed in good faith. Although not a requirement in law, nor conclusive proof of good faith, consultation with another doctor, would seem to help provide evidence of that good faith whereas the lack of such consultation would seem to risk damaging a defence and increase the likelihood of prosecution. Similarly, the receipt of a fee might be prejudicial in any prosecution, more so if the fees are so excessively high as to suggest bad faith or opportunism. The burden of proof was placed firmly on the Crown, thus affirming the basic rule of evidence.

It is generally agreed that Rex v. Bourne⁶⁸ provided an example of the application of the defence of necessity.⁶⁹

Glanville Williams wrote:

The judge's direction to the jury is a striking vindication of the legal view that the defence of necessity applied not only to common law but even to statutory crimes.⁷⁰

Gordon has stated:

R. v. Bourne may be regarded as authority for the view that lesser crimes are justified by the necessity of preserving life.⁷¹

68. [1939] 1 K.B. 687. [1938] 3 All E.R. 615.

69. So far as abortion is concerned, the general defence of necessity is now excluded by s.5(2) of the Abortion Act 1967, which provides that anything done with intent to procure an abortion is unlawfully done unless authorised by the Act, none of the provisions of which authorise any action by a person who is not a registered medical practitioner.

70. Williams, Glanville: op.cit., p.152.

71. Gordon, G.H.: The Criminal Law of Scotland, 1st Edn., Green & Son Ltd., Edinburgh, 1967, p.379. (2nd Edn., 1978) References here are to 1st edition, unless otherwise indicated, since this chapter describes the operation of the law prior to 1967 and the 2nd edition has been up-dated to describe the law in force after 1967.

Smith wrote:

R. v. Bourne rejected a narrow interpretation of the law of necessity.⁷²

The case would appear to illustrate a limitation of that defence with respect to abortion in that Macnaghten J. envisaged lawful abortion as being performed by medical practitioners only and by no other person, but this may not have been so. If it is correct that this does provide an example of the application of the defence of necessity, and it would appear so, then the law is laying down a ruling regarding the choice of values; the life of the mother is to be preferred to that of the unborn child and the law might then have recognised a defence of necessity put forward by an unqualified person who performed an abortion on an opinion formed in good faith that it was necessary to save the woman's life.⁷³

(ii) Rex v. Bergmann and Ferguson⁷⁴

This case involved two women doctors charged with conspiring together unlawfully to procure abortion and went unreported. The Crown's case rested on the evidence of four women, all of whom had seen Dr. Bergmann and two of whom had seen Dr. Ferguson, a psychiatrist, who was associated only with these two cases. The defence maintained that of the two women who saw only Dr. Bergmann, one of the operations was to remove a foetus that

72. Smith, T.B.: A Short Commentary on the Law of Scotland, Green and Son Ltd., Edinburgh, 1962, p.141.

73. This possibility is no longer open following the 1967 Abortion Act. See fn. 69 supra.

74. See a short account of the case in 1948 (1)B.M.J. 1008.

was already dead and the other was to cure an inflammation. In the other two cases, the defence said that Dr. Bergmann had performed abortions on the good and proper grounds of risk to the patients' mental and physical health, grounds endorsed by Dr. Ferguson. The fees received were seen as being reasonable; Bergmann had received £75 in two cases and £50 in another, whilst Ferguson had received three guineas for each consultation. Nor did the fact that Bergmann had performed the operations in her consulting room rather than hospital affect her good faith. The judge addressed the jury:

You are not concerned with the question as to whether Dr. Ferguson arrived at the right conclusion: you have not to decide whether Dr. Ferguson did or did not make a mistake ... you are not here to weigh up whether Dr. Ferguson was correct or incorrect in the view she had formed. You have to be satisfied by the prosecution that she had expressed a dishonest opinion ... did not act in good faith and⁷⁵ was therefore advising something that was unlawful.

This confirmed that the burden of proof is on the prosecution and that the criterion of legality is not the mother's state per se but the doctor's genuine belief as to her condition and the consequences of the continuation of the pregnancy upon the mother, as interpreted by the doctor in good faith. Moreover, Williams contends that this case indicates that where serious injury to health is feared, the court will not look too narrowly into the question of danger to life.⁷⁶

(iii) Rex v. Newton and Stungo⁷⁷

The facts surrounding this unreported case in 1958 were that

75. Quoted by Williams, Glanville from official transcript: op.cit., p.165.

76. Williams, Glanville: op.cit., p.154.

77. See 1958 Criminal Law Review at 469.

a young nurse was admitted to hospital, ill and in a state of agitation but not, according to medical evidence, suffering from any mental disorder. She later died from renal failure following an abortion. The nurse had consulted a psychiatrist about her pregnancy who had referred her to a London West End doctor. She then saw a second psychiatrist, Dr. Stungo, who referred her to Dr. Newton, with the opinion that her disturbed state (she had talked of throwing herself in the river) made an abortion desirable. Dr. Newton who had no specialist qualifications in obstetrics or gynaecology and who described himself as an endocrinologist concluded that she was 'definitely suicidal'. He aborted her in his consulting rooms by giving her an intrauterine injection of utus paste then sent her back to her hotel without further treatment.

The prosecution alleged that when Newton spoke to a hospital doctor, he at first denied aborting her. Newton denied this in court but his good faith was called into question. The defence was that the mental condition of the nurse required the termination of her pregnancy.

On a submission, Dr. Stungo was found not guilty of being an accessory before the fact to using an instrument unlawfully to procure an abortion. His counsel, examining one of the expert witnesses, a psychiatrist, read him a letter, published in the Lancet, about the difficulties of assessing suicide threats by pregnant women. The witness agreed with what was said and the defence revealed that the letter had been written by Stungo seven years previously.

Ashworth J. directed the jury:

If a person, in the course of, or as a result of carrying out an illegal operation, caused the death of the woman, then he is guilty of manslaughter ... The law about the use of instruments is that: Such use of an instrument is unlawful unless the use is made in good faith for the purpose of preserving the life or health of the woman ... When I say health I mean not only her physical health but also her mental health ... But although I have said that "it is unlawful unless", I must emphasise and add that the burden of proving that it is not used in good faith is on the Crown.

Newton was found guilty of manslaughter, by unlawfully using an instrument to procure an abortion, and also of unlawfully using an instrument to procure an abortion. He was sentenced to consecutive terms of three and two years imprisonment respectively. He was found not guilty of manslaughter by criminal negligence.

The judge's direction in this case followed that laid down by Macnaghten J. in R. v. Bourne⁷⁸ by re-asserting that the burden of proof lay with the Crown; that the question of legality centred on the question of good faith; that an opinion was formed in that good faith that the operation was necessary to save the life and health of the woman. It also appears to extend the exception in the law for therapeutic abortion further than that in R. v. Bourne by following R. v. Bergmann and Ferguson (if Glanville Williams is correct) on the point that in considering health, the risk of death should not be inquired into too closely. The case further clarified the point that health means not only physical health but also mental health.

78. [1939] 1 K.B. 690.

9. The law of Scotland

In Scotland, the history of the law of abortion followed a somewhat different course from England. The early institutional writers seem to have dealt with it as a problem of classification and discussed whether the destruction of the unborn foetus should be treated as murder. Mackenzie⁷⁹ was of the opinion that it should be treated as parricide, an aggravated species of murder, but cites no instances of the practice of the law. Hume⁸⁰ and Burnett⁸¹ took the opposite view. Death arising from abortion, however, was regarded as murder by Hume,⁸² Burnett,⁸³ Alison⁸⁴ and Macdonald,⁸⁵ but Gordon⁸⁶ states that this view finds no support in the reported cases and does not accord with practice which invariably means that homicide caused by abortion is charged as culpable homicide although he notes that it may theoretically still be the law that death caused in this way is murder if wicked

79. Mackenzie, Sir G.: *The Works of Sir G. Mackenzie*, 2nd edn., Edinburgh, 1716-22. 1, 113.

80. Hume, Baron: *Commentaries on the Law of Scotland Respecting Crimes*, 4th edn., Bell, Edinburgh, 1844, vol.1, pp.186-187.

81. Burnett, J.: *A Treatise on Various Branches of the Criminal Law of Scotland*, Edinburgh, 1811, 6.

82. Hume, *op.cit.*, i. 264.

83. Burnett, *op.cit.*, 5.

84. Alison, Sir A.J.: *Principles and Practice of the Criminal Law of Scotland*, Edinburgh, 1832, vol.i, 52.

85. Macdonald, J.H.A. (Lord Kingsburgh): *A Practical Treatise on the Criminal Law of Scotland*, 5th edition by Walker, J. and Stevenson, D.J., Edinburgh, 1948, at 91.

86. Gordon, G.: *op.cit.*, 2nd edn., 1978, pp.23-28, 744-745.

recklessness is present although it is unlikely that a murder charge would ever now be brought.

Although not murder, procuring abortion is a crime in Scotland⁸⁷ but differs from that in England. The Offences Against the Person Act 1861 did not apply to Scotland and the criteria therefore differ. Anderson,⁸⁸ Macdonald⁸⁹ and Smith⁹⁰ all take the view that abortion is not criminal if carried out as a necessary medical operation. Smith says:

Such a course may be necessary for the safeguarding of the life or health of the woman who is pregnant and thus comes within the scope of the doctrine of necessity.⁹¹

However, as Gordon points out, there is in fact no clear law in support of this. The case usually cited in support of this is H.M. Advocate v. Graham.⁹² A typical part-time professional abortionist, not a medical practitioner, was indicted on three charges of procuring abortion by the use of drugs and an instrument and one charge of attempted abortion by using drugs. The only reference to necessity in the case is a passing

87. Alison, op.cit., i. 628.

88. Anderson, A.M.: The Criminal Law of Scotland, 2nd edn., Edinburgh, 1904, 156.

89. Macdonald, op.cit., 114.

90. Smith, T.B.: op.cit., p.191.

91. Ibid.

92. [1897] 2 Adam 412.

one by defence counsel to the effect that the acts libelled might have been lawful and necessary in the circumstances⁹³ and his only reference to justification was that the administration of drugs might have been justifiable and done in ignorance of the pregnancy. The question of necessity regarding abortion was not then properly raised but Gordon is inclined to the view that 'no doubt the decision in H.M. Advocate v. Graham⁹⁴ could be suitably interpreted by a court which wanted to acquit a therapeutic abortionist'.⁹⁵ This, he says, could be possible in that Lord Justice-Clerk Macdonald did indicate that he would tell the jury that on the indictment 'there is no crime at all in using drugs or instruments, even if they caused abortion, unless they were used criminally'.⁹⁶

The practice in Scotland with regard to genuine therapeutic abortions carried out by qualified medical practitioners is that the Crown Office does not prosecute. Indeed, Gordon notes that:

Had Dr. Bourne carried out his operation in Scotland, he would probably have failed in his purpose of clarifying the law and giving guidance to his profession, because the authorities would have declined to prosecute.⁹⁷

Procuring abortion in cases other than therapeutic is of course a crime.⁹⁸ Anderson states that abortion is 'criminal if done

93. Ibid at 413.

94. [1897] 2 Adam 412.

95. Gordon, G.H.: op.cit., 1st edn., 1967, p.382.

96. [1897] 2 Adam at 415.

97. Gordon, G.H.: op.cit., 1st edn., 1967, p.383.

98. Minnie Graham, 1897 2 Adam 412 esp. at p.415.

feloniously and not as a necessary medical operation';⁹⁹ Macdonald says that in abortion 'there must be criminal intent, for it may be necessary to cause abortion'.¹⁰⁰ By contrast with England, in Scotland the crime is not the use of drugs or instruments to procure abortion, but the procuring of abortion. The means used can be drugs, instruments or other means, for example, manual manipulation or giving the mother a fright. It can be committed at any stage between conception and birth but it is a defence to show that the foetus was dead before any attempt was made to clear the womb.¹⁰¹

In Scotland the law is again different from England in its requirement that for a charge of attempted abortion to succeed there must be proof that the woman was actually pregnant;¹⁰² nor is it a separate crime to administer abortifacients to a woman who is not pregnant.¹⁰³ A woman who permits someone to carry out an abortion on her or takes drugs supplied to her for the purpose of the crime is art and part guilty of the crime.¹⁰⁴ There are no modern cases in which the woman has been charged, partly because it is usually impossible to convict the abortionist without her evidence but if she were so charged, by contrast with the

99. Anderson, op.cit., 156.

100. Macdonald, op.cit., 114.

101. Gordon, G.H.: op.cit., 2nd edn., 1978, 28.02 p.812.

102. H.M.Advocate v. Anderson 1928 J.C. 1.

103. H.M.Advocate v. Semple 1937 J.C. 41.

104. Alison: op.cit., i.628; Macdonald: op.cit., 114; H.M.Advocate v. Chas. Rae (1882) 2 White 62.

position in England, she would be punished less severely.¹⁰⁵
 It is undecided whether it is a crime for a pregnant woman to take drugs in order to procure her own abortion even where she is unsuccessful but both Macdonald¹⁰⁶ and Gordon¹⁰⁷ think that this is probably the case.

10. Conclusion

To sum up, the law in force in England and in Scotland on the eve of the 1967 Abortion Act was thus fairly clear. In both jurisdictions the procurement of abortion was proscribed under criminal law, though the legal definition was not identical. In England, the modern law on abortion and related offences was statutory, in Scotland the crime was regulated by common law. The Bourne case in England (and its successors) had defined the nature of lawful abortion, and settled that the burden of proof of 'unlawfulness' lay on the Crown. Scottish commentators largely favoured the view that similar exceptions obtained in Scotland, but, as a result of Crown Office practice, the point had not been tested judicially. In future chapters the history of the development of pressure for change in the law will be examined, as will its outcome and legal effect and the subsequent developments.

105. Alison: op.cit., i.628.

106. Macdonald: op.cit., 114.

107. Gordon, G.H.: op.cit., 2nd edn., 1978, 28-03 p.813.

CHAPTER TWO

THE EARLY ORIGINS OF PRESSURE AND ATTEMPTS TO REFORM

THE LAW OF ABORTION (1936-61).

1. Introduction

It is necessary to understand the way in which an area of behaviour comes to be seen as a problem area requiring attention. Such an understanding helps to explain how legislation may subsequently arise; it may not totally explain the passing of the legislation itself but an account of the precipitating factors aids our understanding of the perceived need to legislate and also the form which the legislation takes. Fuller and Myers in their classic definition of a social problem state that it is a condition which is an actual or imagined deviation from a social norm cherished by a considerable number of persons.¹ There are two aspects of every social problem:

- (a) the objective, which is a verifiable condition, situation or event, the existence and magnitude of which can be checked by impartial and trained observers.
- (b) the subjective, which depends upon the awareness or definition of certain people that the condition, situation or event is a threat to certain cherished values and a consciousness that something must be done about it.²

The latter commands most attention since it is the subjective definition which makes the problem a social one requiring attention. Yet Fuller and Myers have failed to consider the possibility of

1. Fuller, R.C. and Myers, R.C.: Some Aspects of a Theory of Social Problems, American Sociological Review, vol.6, (1941) p.25.

2. Ibid. p.25.

differential definitions of the same phenomena. Becker criticises them for failing to realise that the definitions themselves play a role in shaping the form the problem takes in society.³ For Becker, social problems are the result of a basically political process in which opposing views are advanced, argued and compromised. The motivations and machinations of the groups possessing different conceptions of the social problem take many forms and the groups attempt to persuade others of their views so that public action will be taken to further the goals they wish to achieve.⁴ The role of such groups in promoting or opposing legislation over various problem areas is now relatively well documented in specific case studies.⁵ The task is then to consider whether such a grouping or groupings arose in relation to abortion legislation and, if so, who were they, what were their motivations, what was the nature of the social problem they perceived and how did they achieve or fail to achieve their goals.

During this period a number of individuals and organised groups expressed viewpoints on the legality of abortion, including women's

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3. Becker, H.S. (ed.): *Social Problems: A Modern Approach*, John Wiley and Sons Inc., New York, 1966, p.6.
 4. Ibid. p.11.
 5. See, among others, Chambliss, W.J.: *A Sociological Analysis of the Law of Vagrancy*, *Social Problems*, vol. 12, (1964) pp.67-77; Fuller, R.C.: *Morals and the Criminal Law*, *Journal of Criminal Law and Criminology*, vol. 32, (1942), pp.624-630; Hall, J.: *Theft, Law and Society*, Bobbs-Merrill, Indianapolis, 1952; Platt, A.M.: *The Child Savers: The Invention of Delinquency*, University of Chicago Press, Chicago, 1969; Becker, H.S.: *Outsiders: Studies in the Sociology of Deviance*, Free Press of Glencoe, New York, 1963.

groups and the medical profession but the most energetic and sustained voice was that of ALRA. Such a group is never created or indeed operates in a vacuum however. Thus, although this chapter is principally concerned with the formation of ALRA, its underlying concerns, aims and tactics, it would be deficient if it did not account for concerns and events prior to ALRA's formation and with subsequent landmarks in the history of abortion law reform over which ALRA had little or no direct control or influence. Essential and helpful though the study of motivation and causes is, over-concentration on them is not useful in that it leads to a tendency to ignore the fact that a movement has to organise its activities within the larger environment of many groups who may hold different definitions, values and aims and with whom the principal reform group interacts. It is essential then to look at their interplay to assess the nature of any ensuing legislation. This approach is most succinctly summed up by Lemert who argues that what is needed is a model of group interaction rather than of interpersonal interaction, so that interests, values and claims of others and the order in which they are likely to be sacrificed in the light of group interaction can be accounted for.⁶ This chapter will therefore describe, chronologically, those concerns, groupings and important events which were significant in the struggle to effect change in the law regulating the availability of legal abortion.

6. Lemert, Edwin: *Human Deviance, Social Problems and Social Control*, Prentice-Hall, Englewood Cliffs, New Jersey, 1972, p.20.

2. Individual expressions of disquiet

Stella Browne, later to be a founder of ALRA, is reputed to have been the first person to raise the question of abortion law reform on a public platform as early as 1915 and, in 1922, when addressing an international birth control conference, she advocated abortion on demand.⁷ Her reception at that time is reputed to have been one of cold disapproval.⁸ Before the formation of ALRA it is however possible to find other examples of people in more influential positions advocating some measure, albeit limited, of abortion law reform. The role of such people in shaping subsequent opinion has long been noted. Both Dicey and Allen have stressed 'legislation is governed by the public opinion of those citizens who have, at a given moment, taken an effective part in public life',⁹ and that 'the opinion which affects the development of the law has, in Modern England, often originated with some single thinker or school of thinkers'.¹⁰ In 1927 Lord Riddell in addressing a Joint Meeting of the Medico-Legal Society and the Section of Obstetrics and Gynaecology of the Royal Society of Medicine had raised the

7. Roberts, H. et al: Symposium on Abortion, Allan and Unwin, London, 1935.

8. Hindell, K. and Simms, M.: Abortion Law Reformed, Peter Owen, London, 1971, p.59 and Hindell, K.: Profile of Stella Browne and Janet Chance, The Listener, 29 June 1972.

9. Dicey, A.V.: Law and Public Opinion in England in the 19th Century, Macmillan, London, 1948, p.10.

10. Allen, C.K.: Law in the Making, 7th edn., Clarendon Press, Oxford, 1964.

issue of abortion law reform as a topic requiring detailed consideration, although he himself offered no remedy. The subject was again raised publicly by Mr. Justice McCardie in 1931 and in 1933 in giving the Galton Lecture to the Eugenics Society when he expressed the views:

The law of abortion as it exists ought to be substantially modified. It is out of keeping with the conditions that prevail in the world around us ... It is plain to me that many of those who seek to uphold this law of abortion are wholly ignorant of the social problems which menace the nation. I cannot think it right that a woman should be forced to bear a child against her will.¹¹

3. Groups' resolutions in favour of reform

In addition to those individuals advocating change, calls for reform of the law had also been made prior to 1936 by both the Women's Co-operative Guilds (WCG) and the National Council of Women (NCW) and it appears that Mme Lorsignal, later to be an executive member of ALRA, had been instrumental in securing the resolutions passed.¹² The WCG called for immediate revision of the abortion laws of 1861 and an amnesty for those women imprisoned for breaking 'these antiquated laws' but with little success. However, the resolution of the NCW sent to the Home Secretary calling for a committee of inquiry to be established was later heeded with the setting up of the Interdepartmental

11. Mr. Justice McCardie: Eugenics Review, April 1933.

12. ALRA Private Papers (uncatalogued).

Committee on Abortion under Lord Birkett's Chairmanship.

4. Expression of professional opinion: British Medical Association
(BMA) Committee Report¹³

From 1932 onwards the problem of abortion had been raised at successive BMA annual conferences. Sufficient concern was generated by advocates of reform, most notably Alec Bourne, for the Council to set up a working party in 1935 to report on the medical aspects of abortion. It was chaired by Professor James Young of Edinburgh who was personally in favour of legal change in the abortion laws and included in its members Alec Bourne. Two reasons were advanced for appointing the committee. Firstly, it was felt to be unfair that doctors had to interpret an unclear law. The second was that doctors should guide public opinion. The latter point was rejected in the report, for the problem was seen to encompass so many aspects that the 'medical profession has no special right and no special competence to deal with them'.¹⁴

The motivating factor was then principally one of self-interest stemming from the view that the law left doctors exposed to risks of suspicion and professional damage. But there was also a humanitarian concern for women since the committee report of 1936 stated that in its view practitioners may demur to

13. British Medical Journal, vol.1 25 April 1936 (Supplement) pp.230-238 which includes the debate on the report at the 1936 Annual Conference. This section is based on the BMJ article.

14. Ibid.

perform therapeutic abortion with the consequent risk of sacrifice of the health or life of the patients under their care. The report recognised that social and economic factors were strong motivating reasons for women seeking abortion and took the view that the legalisation of abortion for such reasons would rescue the public from the risk to life and health implied in the illicit procedures of unskilled operators. However, having stated that medical practitioners were not qualified to deal with such matters, the committee did not expressly recommend such grounds as specific circumstances in which therapeutic abortion should be carried out, saying that this was a matter for the whole community to decide.

It did recommend that there be an explicit statement of the principles which should govern the lawful termination of pregnancy and made suggestions that these should cover risks to life and health including mental health and that pregnancies occurring among the under 16 year olds, or where there is a risk of the child being born defective, should be recognised as affecting the health of the mother. It also advocated that abortion should be carried out only on the approval of two doctors and that, to avoid collusion, one of the doctors should have some recognised status or approval similar to that given by the Board of Control under the Mental Health Treatment Act 1930. Specifically too, the committee recommended against notification of therapeutic abortions as being impracticable

and prejudicial to the special nature of the doctor-patient relationship. Increased advice on and provision of facilities for contraception was seen as being necessary to the avoidance of abortion.

There is some evidence however that the necessity of a second opinion and especially of a 'recognised status' did not meet with full approval within the profession itself.¹⁵ When the report was discussed at the annual conference in 1936 it was greeted with considerable hostility. Most representatives protested that they had little or no doubt how the law should be applied and thought that legislation would lead to irresponsible demands for abortion. Several attempts were made to suppress the publication of the report but these were defeated.

5. The formation of ALRA 1936

In the same year that the BMA committee reported, there was formed, for the first time, a group designed specifically to fight for the liberalising of abortion laws, ALRA. This development was perhaps one of the most important factors in the reformation of the law governing abortion as will be shown later in this chapter in a fuller description and analysis of its structure and activities.

15. See Lancet, vol.1, 1936, p.1073, Leading article.

6. Report of the Committee on Maternal Mortality 1937¹⁶

The next important date in the history of abortion law reform was 1937 when the committee investigating maternal mortality recommended that the Government should establish another committee specifically to examine the prevalence of abortion. This recommendation was perhaps more responsible for such a committee being established than the resolutions submitted by the aforementioned women's groups.

7. The establishment of the Birkett Committee 1937

The interdepartmental committee set up in 1937 under the chairmanship of Norman Birkett, KC, later Lord Birkett, was a joint committee of the Home Office and the Ministry of Health to 'enquire into the prevalence of abortion and the law relating thereto and to consider what steps can be taken by more effective enforcement of the law or otherwise to secure the reduction of maternal mortality and morbidity arising from this cause'.¹⁷ It is interesting as Hindell and Simms point out, that the pro-reformers who saw the report as feeble fail to record that it was within the committee's terms of reference to advocate more effective enforcement.¹⁸

16. Report on an Investigation into Maternal Mortality, Cmd. 5422, H.M.S.O., London (April 1937).

17. Report of Inter-Departmental Committee on Abortion, Joint Report of Ministry of Health and the Home Office, H.M.S.O., London, 1939. Hereinafter referred to as 'Birkett' or 'the Birkett Committee'.

18. Hindell, K. and Simms, M.: Abortion Law Reformed, op.cit., pp.73-75.

The Birkett Committee consisted primarily of men. A large number were doctors, a majority of them being gynaecologists; there were two lawyers and only four women on the committee: Lady Ruth Balfour, a suffragette and a doctor; Lady (later Dame) Williams, an economist who was the daughter of the Edwardian novelist Elinor Glynn; Mrs. Stanley Baldwin, wife of the Prime Minister; and Mrs. Dorothy Thurtle who later joined ALRA. (She was the Labour leader of the Shoreditch (London) Borough Council, the daughter of George Lansbury and the wife of Ernest Thurtle, both Labour M.P.s.) The committee held forty-seven meetings and heard evidence from fifty-five witnesses including representatives of various organisations; the medical profession, birth control movements, women's groups, the police, religious lay organisations and secular groups. Perhaps surprisingly the churches did not give evidence per se but the leaders of the Anglican, Roman Catholic and Jewish faiths provided the committee with statements of their church's viewpoints on abortion.

8. Evidence to the Birkett Committee

(1) The BMA

The evidence given to the Birkett Committee by the BMA has already been described in this chapter for it consisted of the BMA Committee report published in 1936.

(ii) The British College of Obstetricians and
Gynaecologists (BCOG)

The position adopted by the BCOG in its evidence to the Birkett Committee was that therapeutic abortion should be clearly legal but only within certain restrictions and subject to many safeguards in order to avoid its abuse.¹⁹ It was felt that such abuses could best be avoided by insisting upon a second opinion and more especially that the second opinion should be that of a specialist. In particular, the general practitioner ought not to be trusted as he was likely to be unduly sympathetic to the woman; not only should he not take part in the decision-making process but he was not to be trusted in suggesting the source of the second opinion; only gynaecologists were responsible enough to do this. Another check was seen as being to require notification of all therapeutic abortions but there was no agreement as to the body to which notification should be made. Yet another difference between the BMA and the BCOG was the latter's view that a classified list of conditions justifying abortion was to be avoided whereas the BMA had asked for specific guidelines. Such provision was seen by the BCOG however as strengthening the position of the woman and weakening the position of the gynaecologist who would then 'find it difficult to refuse to perform the operation and might even be sued for negligence for refusal to terminate'. The only ground on which extension of the law was welcomed was where a girl had been raped and was under the age of consent. The dominant motivation of the

19. Birkett Committee Papers 1937-39, a copy of many of these papers is contained in the ALRA Private Papers collection to which they were given by Dorothy Thurtell a member of the Birkett Committee and later ALRA member. A full set of Committee Papers is available at Public Records Office (PRO).

BCOG was one of professional concern (including concern for the status of specialist obstetricians, and, to that extent, self interest) and although ostensibly in favour of clarification, its position is such that it would almost be better considered an opponent of liberalisation.

(iii) Other medical bodies

In addition to the BMA and the BCOG, the committee received evidence of a much less substantial nature from the Medical Women's Federation,²⁰ the Fellowship of Medicine,²¹ the Midwives Institute,²² the Joint Council of Midwifery²³ (which included representatives of the BCOG, the BMA, the College of Nursing, County Medical Officers of Health and the Medico-Legal Society) and the Westminster Branch of the Catholic Nurses Guild.²⁴

The Medical Women's Federation was of the view that abortion was an undesirable and unnatural practice which was to be avoided in as far as was consistent with preserving the life, health or sanity of the mother. It regarded the prevailing law as satisfactory. If, however, legislation was recommended by the committee then the Federation wished to see a statutory requirement that there be two medical opinions (one of which it recommended should be that of a consultant) certifying that the

20. P.R.O. MH/71/23.

21. P.R.O. MH/71/25.

22. P.R.O. MH/71/22.

23. P.R.O. MH/71/20.

24. P.R.O. MH/71/21.

operation was necessary to save the life or health of the mother and that there should be notification of the abortion to a relevant government department. The Federation was specifically against abortions being performed on social or economic grounds alone but thought possible exceptions to this general prohibition could be made in certain cases where pregnancy was a result of criminal assault or where the girl was under the age of consent.

The Fellowship of Medicine expressed the hope that the law would be changed by statute to make it unmistakably clear that there were circumstances in which therapeutic abortion was lawful but it did not specify which provisions it would wish to see embodied in legislation.

The Midwives Institute denied that abortion was a prevalent practice and was of the opinion that in the relatively few cases which occurred the principal causes were economic. It advocated more extensive education on birth control methods and a system of family allowances as preventive measures and increased enforcements to stop the advertisement of abortifacients. It expressed no views on the desirability of legislation.

The evidence of the Joint Council of Midwifery advocated that changes be made by statute to allow therapeutic abortion in cases where two doctors were of the opinion that such an operation was medically necessary. It further recommended that one of the two

medical opinions should be that of a consultant approved for the purpose by the Ministry of Health. The Joint Council was also in favour of a system of notification in order to avoid abuses.

Perhaps unsurprisingly, the Westminster branch of the Catholic Nurses Guild condemned all abortion as contrary to natural moral law and disapproved of any proposed changes which would make abortion legal.

(iv) Position of the churches

As mentioned earlier, the churches did not give evidence to Birkett but statements were sent to the committee by the Archbishops of Canterbury²⁵ and Westminster²⁶ and by the Chief Rabbi²⁷ but not by the leaders of the Church of Scotland or the Methodist Church.

The statement made by the Anglican church recorded its

... abhorrence of the sinful practice of abortion and strong denunciation of abortion ... as contrary to the law of God and of man.

This view was shared by the Roman Catholic church in its statement that :

No exception of any kind [can be made] to the law of God and of nature. The direct causing of abortion is a crime. In those cases in which the life of the foetus appears to be in conflict with the life of the mother, it is unlawful directly to kill either the one or the other.

25. Ibid.

26. Ibid.

27. Ibid.

The Jewish view of abortion was less forbidding in that exceptions to the general rule forbidding abortion were allowed where the mother's life was in danger.

(v) Religious lay organisations

The Modern Churchman's Union²⁸ expressed the view that the 'present law is cruel, inhuman, ineffective and unchristian'. It opposed any general license of abortion but thought that in making any decision regarding the operation's necessity the health of the mother and the life likely to be led by the child, if born, should be regarded as of paramount importance. Circumstances in which it was thought therapeutic abortion could be justifiable included: to save life; where pregnancy resulted from rape or incest; where the mother was 'feeble-minded' and there was a risk the child would be 'hereditarily tainted'.

By contrast, the Westminster Catholic Federation²⁹ predicted that legalisation of therapeutic abortion would lead to moral laxity, an increase in venereal disease and to a totalitarian society such as the Soviet Union which had permitted such a practice. Abortion was regarded as being against natural law. The Federation opined that 'legalised abortion would not free women from sex slavery but would intensify it'.

(vi) ALRA

Two strands may be discerned in the evidence ALRA gave to

28. Ibid.

29. Ibid.

Birkett: one represented its ideal viewpoint and the other a more moderate line which was thought to be more likely to secure wider agreement. Ideally, ALRA wanted the actions of both doctors and women seeking abortions totally removed from the ambit of the criminal law. It did not however wish for total decriminalisation which would have allowed back street abortionists to operate freely and legally. It regarded the stigmatisation of both women and doctors as ill-conceived, for women were not seen to seek abortion from a desire wilfully to break the law and doctors who did perform abortions were seen as providing a valuable humane service which ought to be recognised by the law as a proper part of medical practices and services. The more moderate recommendation was that abortion should be unmistakably legal when it was in the interests of the health of the mother.³⁰

From this memorandum there is clear indication of the cases which ALRA felt ought to be covered by any legislation making abortion laws more liberal. It wished the committee to recognise the reasons for which women seek abortion and to advocate legislation covering these reasons as specific grounds for termination of pregnancy. The reasons advanced were:-

- (a) The maintenance of an adequate standard of living (financial, health, housing, well-being, educational ambitions).
- (b) The undesirability of births resulting from incest, rape or criminal assault.

30. ALRA Memo to Birkett Committee: ALRA Private Papers (uncatalogued). Also in P.R.O. MH/71/22.



- (c) The immature age of the mother-to-be.
- (d) The disastrous consequences in the present state of opinion of childbirth by an unmarried mother.
- (e) The loss of employment consequent on childbirth for women on whose earnings the family depends.
- (f) The fear of handing on some trait which has proved disastrous in the family history of husband or wife.
- (g) The death of or desertion by the wage earner.
- (h) The mother's feeling that although she is willing to suffer the disabilities of another pregnancy, her strength and happiness will fail under it.

Specifically, ALRA was against: notification of abortion as likely to drive abortion further underground; selection panels as endangering the doctor/patient relationship, causing embarrassment to the woman, and calling upon lay people to make decisions when they might not possess 'a scientific unprejudiced attitude towards sex and reproduction'; differentiation of treatment between married and unmarried women; and harsher penalties for those breaking the law. There is also some evidence to suggest that it thought the termination should take place within three months of the time of conception and only in cases of extreme danger to health after that period,³¹ and that any woman who had borne four children or had four previous pregnancies and who did

31. Thurtle, D.: *Abortion: Right or Wrong?*, T. Wenner Laurie, London, 1940, p.51.

not desire to continue with a fifth should have the unequivocal right to abortion.³²

(vii) Women's groups

With the exception of the Mothers Union³³ and the Union of Catholic Mothers³⁴ both of which regarded abortion as the wilful destruction of human life and advocated more effective enforcement of the existing laws, the organised women's groups welcomed the idea of reforming legislation which would allow therapeutic abortion on socio-medical considerations. These groups included the National Council of Women,³⁵ the Women's Co-operative Guilds,³⁶ and the East Midlands Working Women's Association.³⁷

(viii) Other groups

Support for legislative reform to allow increased availability of therapeutic abortion came from the Society of Birth Control Clinics,³⁸ the National Council of Equal Citizenship,³⁹ the National Birth Control Association⁴⁰ and the National Secular Society,⁴¹ and the Eugenics Society.⁴² Opposition to any

32. Ibid. p.63.

33. P.R.O. MH/71/21.

34. P.R.O. MH/71/25.

35. P.R.O. MH/71/23.

36. P.R.O. MH/71/25.

37. P.R.O. MH/71/23.

38. P.R.O. MH/71/21.

39. P.R.O. MH/71/23.

40. P.R.O. MH/71/23.

41. P.R.O. MH/71/25.

42. Ibid.

relaxation of the law was expressed by the League of National Life.⁴³ The Chief Constables' Association advocated more extended enforcement of the existing law.⁴⁴

(ix) Polarisation of opinion

It is perhaps useful to try to summarise the polarisation of viewpoints. Opposition to all legalised abortion came from all the Catholic bodies and the Mothers Union. Within the medical bodies, the BMA was most in favour of reforming legislation and welcomed precise provisions as to the circumstances in which therapeutic abortion would be legal. Support for legislative reform was also expressed by the Fellowship of Medicine and the Joint Council of Midwifery. Neither the BCOG nor the Medical Women's Federation saw any need for legislative action and are perhaps more accurately described as opponents of legislative reform. The churches were not in favour of reform although one lay organisation, the Modern Churchman's Union, did not share this viewpoint. ALRA had the support of the secular organisations and the majority of women's groups, with the aforementioned exceptions. Of the groups supporting ALRA, however, none explicitly expressed a view in sympathy with ALRA's ideal position although the WCG and the secular organisations did wish for abortion to be legal on socio-medical grounds. By far the most detailed evidence

43. P.R.O. MH/71/23.

44. P.R.O. MH/71/25.

came from the BMA, the ECOG and ALRA and when considering later in this chapter whose views, if any, the committee supported, the analysis will relate to the three basic positions presented by these groups.

9. The Bourne Judgment 1938

Whilst the Birkett Committee was deliberating, the important case of Rex v. Bourne was decided. This laid down the criteria to be applied in deciding whether abortion was unlawfully carried out and thus effected a far-reaching change in the law.

In the previous chapter, the principal cases⁴⁵ which effected a change in the law on abortion were discussed. It will suffice here to point out how the decisions in these cases were regarded by the various groups interested in the abortion issue. Of those groups opposed to further legislation, some thought that any form of legal abortion was unacceptable and therefore deprecated these judicial decisions: others objected to the provisions allowing for consideration of health, especially mental health: a third school of thought held that the law now reflected morally and socially 'correct' attitudes to abortion. Of those groups favouring legislation, some merely

45. Rex v. Bourne [1939] 1 K.B. 687. [1938] 3 All E.R. 615.

Rex v. Bergmann and Ferguson. Unreported but see 1948 (1) BMJ 1008 and Glanville Williams, op.cit., p.154.

Rex v. Newton and Stungo. Unreported but see 1958 Criminal Law Review 469.

advocated statutory declaration of existing case law, regarding statute law as more authoritative and as removing any possibility of these cases being overruled in a higher court. Although in strict legal theory these rulings were not binding on High Court judges and could be overruled in the Court of Criminal Appeal or the House of Lords, the fact that this was unlikely did not provide the degree of certainty desired, particularly by the medical profession. This view concerning the need for certainty was shared by ALRA who of course also desired further legislative changes to extend the grounds on which legal abortion could be obtained.

Although ALRA was moderately pleased by the Bourne decision, it is open to speculation whether its cause would have been better served by a conviction. Such a result might well have caused a rallying of public and medical support given that Bourne was a highly respected surgeon of considerable social standing and that the facts of the case aroused general sympathy and support. The consequence of a conviction could have been an increase rather than a decrease in the demands for legislation.

10. The Birkett Report 1939

After sitting for two years, the Birkett Committee reported in 1939. The committee worked on the BMA estimate that 16-20 per cent of all pregnancies ended in abortion and estimated that each year there were some 110-150 thousand abortions taking place

in Britain of which 40 per cent were illegal. The impression it held was that criminal abortion was increasing.⁴⁶ It endorsed ALRA's view that abortion was most prevalent in urban areas; that the practice extended to all classes; that the overwhelming majority of abortions occurred among married women; and that the practice was most common in the case of mothers in the higher age group.⁴⁷ It did not agree however that abortion, even when carried out by skilled doctors in hygienic conditions, was relatively free of risk to life or health and felt that such risks ought to be considered in any decision to liberalise therapeutic abortion.⁴⁸ But it did recognise that abortions done within three months of pregnancy were comparatively safe, again endorsing the ALRA viewpoint. The committee also agreed with ALRA as to the reasons which motivated women to seek abortions. Most importantly, it recognised that economic causes were predominant - poverty, bad housing, unemployment; that purely selfish motives predominated in only a small minority of cases; and that abortion was commonly resorted to in the belief that the best interests of the patient and other members of the family were thereby served.⁴⁹ The committee upheld the views of ALRA, the BMA and the BCOG that the law required clarification so as to

46. Birkett Committee op.cit., p.11.

47. Ibid. p.14.

48. Ibid. p.15.

49. Ibid. p.20.

remove any doubt which might exist regarding the position of general practitioners vis-a-vis abortion. It wished to see a clear statement that a practitioner would be acting within the law where he terminated a pregnancy in order to avoid risk of serious injury to health likely to occur if the pregnancy continued.

In its recommendations, however, the committee disagreed with ALRA and agreed more with the medical bodies but especially with the BCOG. Specifically, ALRA had recommended legalising abortion for non-medical reasons and giving the medical profession unrestricted discretion to perform abortions; failing that, ALRA recommended legislation making it unequivocally clear that abortion was legal when there was risk to health. At no point did ALRA suggest that the risk involved should be serious. The BMA had declined to recommend the legislation of abortion on non-medical grounds as outwith its realm of competence, but had expressed the view that to do so would greatly reduce the number of illegal abortions. The BCOG had specifically rejected the idea of abortion for social reasons.

In its recommendations for extension the committee mainly followed the lines of the BCOG. It was recommended that:

The law should be amended to make it unmistakably clear that a medical practitioner is acting lawfully when in good faith he procures the abortion of a pregnant woman in circumstances which satisfy him that continuance of the pregnancy is likely to endanger her life or seriously impair her health.⁵⁰

50. Ibid. pp.37-44.

The suggestion that the medical profession should have unrestricted freedom to perform abortions was totally rejected⁵¹ and, by the inclusion of the word 'serious' relating to the risk to health, it was made clear that ALRA's recommendations did not carry as much weight as did its analysis of the situation relating to abortion.

The committee disagreed with the BMA and thereby agreed with the BCOG, that specific grounds be laid down for abortion as it felt that the real test was not that the woman was suffering from any particular form of illness, but that her illness was likely to make the continuance of the pregnancy seriously dangerous to her life or health. In its rejection of non-medical grounds for the termination of pregnancy, the committee accepted the reasoning of the BCOG and thereby implicitly agreed with the churches' statements that:

Such proposals are contrary to religious and ethical teaching and to fundamental principles on which society is based and we believe that if given effect they would have serious consequences.⁵²

It was thought that among these consequences would be a diminution in the belief in the sanctity of life:

... that the individual is sacred is one of the main principles upon which social life rests ... this principle means that life must not be deliberately taken, save in very exceptional circumstances, and any measure which would detract seriously from the sanctity of life must, in our view, be regarded as fundamentally unacceptable.⁵³

51. Ibid. p.72.

52. Ibid. p.83.

53. Ibid.

It would lead to a decline in the population:

Any measure designed widely to extend the basis upon which the induction of abortion was permissible would have that [population reducing] effect ... this would be regrettable.⁵⁴

It would lead to abortion on demand:

We consider that the approval which would be implicit in the legal recognition of induced abortion as an operation which might properly be performed at the woman's request, or generally on social and economic grounds, would serve to create a widespread demand for it, and would in itself tend to result in the lowering of the birth-rate.⁵⁵

Finally it would lead to loose and immoral conduct:

There can be no doubt that such a measure would prove an added temptation to loose and immoral conduct ... The fact that such a consequence would be likely to follow would in itself make it difficult to support any considerable relaxation of the law.⁵⁶

In addition, the committee thought that there would be increased health risks for women if abortion were too freely available and rejected, on practical grounds, the provision of abortion for rape, incest or any eugenic reason and for girls under sixteen years of age.

In the safeguards which the committee proposed there was a compromise of conflicting viewpoints with some groups winning a point here but losing a point there. Before a decision to terminate was taken, it was advocated that a second opinion was necessary. This safeguard had been proposed by both the BMA and BCOG both of which had also recommended that the second opinion be of a

54. Ibid.

55. Ibid. p.84.

56. Ibid. p.85.

recognised status, the BCOG wishing to exclude general practitioners totally from decision-making. The report, however, did not go as far as this, merely stating that the concurrence of a specialist in the condition which was thought to render continuance of the pregnancy a serious danger to life or health, although desirable, was not practicable. In its recommendations on notification, the views of the BCOG were again upheld whilst those of the BMA and ALRA were overridden. The report advocated that notification should be made within 48 hours of the termination to the Medical Officer of Health of the local authority and that such notification should be confidential but access be available on request to the Chief Constable.

In view of the many groups holding such divergent positions and the role of such committees in 'cooling passions' it is perhaps not surprising that the final report should represent such a compromise, nor that it failed to advocate either of the two extreme solutions. The report shows that the committee itself was split to quite a considerable extent between these two extremes. No fewer than six of its fifteen members advocated provision for extended enforcement through the notification to the police of all cases involving abortion, including those coming before the medical profession as a result of spontaneous or what appeared to be criminal abortion, whilst one member, Mrs. Dorothy Thurtle, was so outraged by the conservative tone of the main report, that she insisted on having her minority report published in which she advocated all the ideal aims of ALRA.

What is perhaps surprising ^{and} is the recommendations regarding contraception contained in the main report for, although economic reasons were recognised as predominant in those seeking abortion, and, although the committee advocated the adoption of any social, economic or educational measure to alleviate the need for abortion (which was seen as a great social evil), it refused to advocate the extension of the provision of contraceptive facilities to all married couples but endorsed the status quo by recommending that contraception only be freely available for married women to whose health a further pregnancy would pose a grave danger.⁵⁷ Its reasons for doing so appear mainly to stem from its concern with the 'welfare and continuity of the State' at a time when the birth rate was falling.⁵⁸ Another reason for this failure to innovate lay in the belief that to spread contraceptive knowledge would lower the traditional and accepted standards of sexual morality. This failure met with severe criticism from both the BMA and ALRA.⁵⁹

The appointment of royal commissions, interdepartmental committees, standing advisory committees and select committees of either House of Parliament usually indicates that a number of pro-legislation factors are already operative to a greater or lesser extent. This was certainly true in relation to the

57. Ibid. p.102.

58. Ibid. p.67 and p.81.

59. British Medical Journal, vol.1 (1939), pp.1236-1237.

Birkett Committee. It should also be noted that even after the report of such a committee any one or more of these same factors can continue to operate to determine whether or not legislation will result and/or what form it will take. Such committees are usually set up 'to inquire into the facts, to have an exhaustive examination' but this ascertaining by experts of the best or most feasible solution to a problem often acts as a guise to forestall criticism and prevent anticipated political pressure.⁶⁰ So it was with the abortion issue. As war broke out immediately afterwards, it is impossible to assess whether there was ever any intention of acting upon the committee's recommendations, but the reluctance of succeeding Home Secretaries in both the 1950's and 1960's to implement its proposals does lend weight to this view, as does the report's classification as 'non-parliamentary'. This meant that the report was not automatically issued free to M.P.s and that it was not included in the bound sets of official publications; in other words, the report was not regarded as being of major importance or as being likely to lead to early legislation.⁶¹ Furthermore, the report cost eleven shillings, approximately four times that of other publications of similar size issued at that time by the Stationery Office. Richards

60. Clokie, H.McD. and Robinson, J.W.: Royal Commission of Inquiry, Stanford University Press, Palo Alto, 1937, pp.123-5.

61. See Ford, P. and Ford, G.: A Guide to Parliamentary Papers, Blackwell, Oxford, 1955, especially pp.16-17.

concludes that one can but assume that the high cost to purchasers was deliberately designed to restrict circulation'.⁶²

With the outbreak of war and consequent governmental inertia over implementing the Birkett Report, the abortion issue became once more a subject neglected by everyone except ALRA.

11. ALRA

(i) The people involved

ALRA was formed in 1936 by a group of women with the specific intention of liberalising the abortion laws. Its principal founders were Janet Chance, Alice Jenkins, and Stella Browne, with Dorothy Thurtle, a keen advocate of reform, joining a few years later. These names came to be identified with the cause of abortion law reform but others involved to a lesser degree were Dora, wife of Bertrand Russell, and Frida, wife of Harold Laski. To any organisation pressing for reform there is an urgent need to appear prestigious, responsible and respected, for this affects its ability to operate. 'Good reputation is one of its [a movement's] most effective means of influence.'⁶³ The importance of prestige helps explain a movement's attempts to gain the allegiance of influential people and to get them to identify themselves publicly with the pressure group. To this end, the founders of ALRA sought and obtained from the beginning the help of the husbands of

62. Richards, P.G.: *Parliament and Conscience*, op.cit., p.93.

63. Mackenzie, W.J.M.: *Pressure Groups in British Government*, *British Journal of Sociology*, vol.6, (1955), pp.133-148.

Dora Russell, Frida Laski, Dorothy Thurtle (whose husband was an M.P.); Sidney and Beatrice Webb, Aldous Huxley, Lord Horder, H.G. Wells and many others were listed among their active advisers and supporters.⁶⁴

The founders of ALRA are remembered, by Mrs. Garrett, one of the first secretaries of ALRA, as being radical and fiercely feminist.⁶⁵ Most were actively interested in the state of women and especially in maternal welfare. Frida Laski and Dora Russell had toured the Durham coal-fields in the early 1920's lecturing on birth control to miners' wives. Dorothy Thurtle, Alice Jenkins, Janet Chance and Stella Browne all met on the birth control committee formed by Frida Laski and Dora Russell to bring contraceptive knowledge to the working classes. This approach of women in high positions in the social structure to those in subordinate positions, is quite common in moral reform campaigns. Becker,⁶⁶ Gusfield⁶⁷ and Platt⁶⁸ are only three writers whose work clearly demonstrates this type of crusading activity. This birth control committee became known as the Workers Birth Control Group and helped form the National Birth Control Association, later to become the Family Planning Association.

64. Jenkins, Alice: *Law for the Rich*, Victor Gollancz Ltd., London, 1960, p.50.

65. Interview with Mrs. Margaret Garrett, one of the first secretaries of ALRA.

66. Becker, H.S.: *Outsiders: Studies in the Sociology of Deviance*, op.cit.

67. Gusfield, J.R.: *Symbolic Crusade: Status Politics and the American Temperance Movement*, op.cit., 1963.

68. Platt, A.M.: op.cit.

The women themselves were also interested in the wider field of women's suffrage and most were active members of the Labour Party and free thinkers. Janet Chance is remembered by Mrs. Garrett as extremely good looking with great personal magnetism and dynamism. She also suffered periodically from extreme mental depression. She is typical of the dominant upper-class woman whose life revolved in a gay social whirl, living for a time on yachts with her stockbroker husband, and devoting herself to good causes for the benefit of the under-privileged. It was she who in the early years was to be the mainstay of ALRA, often financing the organisation and finding many supporters from her social circle. Her work in the birth control movement and in the sex advisory centre she set up in the east end of London convinced her of the need to liberalise abortion. Stella Browne often appears the most emancipated of the group, the most fiercely feminist and the one most strongly convinced that abortion was fundamentally a woman's right. She was regarded, Mrs. Garrett recalled, as an eccentric who often caused the others much embarrassment by her refusal to moderate her views. Alice Jenkins was the administrator of the group coming from an intensely suffragette and politically minded family whose friends included such radicals as Philip Snowden, Robert Blatchford and the Pankhursts. Dorothy Thurtle's background was similarly very political; she was involved in Labour politics and was both the daughter and the wife of Labour M.P.s.

(ii) Definition of the social problem

Their concern arose from various sources. In their work in

birth control centres, they were presented with many women who came for advice not on birth control but abortion. Not only were they asked to advise on termination methods, but they were faced with women to whom abortion was an everyday reality and who were not deterred by its illegality. Many poor women had resorted to backstreet abortionists, unskilled operators working in insanitary conditions, or had managed to self-induce abortion either alone or with the help of family and friends. The clinics saw the results of these undesirable practices, for those who survived often suffered from many complications giving rise to a state of chronic ill-health.⁶⁹ Although it was impossible to obtain accurate figures regarding the prevalence of illegal abortions, it was felt by the reformers to be high. Dr. Joan Malleson, an ALRA campaigner, had pointed out that 35% of 300 women questioned in hospital by a Birmingham gynaecologist had admitted to having had at least one abortion and, given that the subject was generally regarded as taboo, and, given that they were admitting to having committed an offence, she took the view that the real figure was probably much higher.⁷⁰ Later the Birkett Committee was to accept estimates based upon observations in hospitals to the effect that there were between 44,000 and 60,000 illegal abortions every year. As Glanville Williams later calculated, accepting the lower of these estimates, this meant that there were over 120 illegal abortions taking place every day or one every twelve minutes.⁷¹

69. For a discussion of the methods used and their results see Hordern, A., op.cit., chp.1

70. Quoted in Jenkins, Alice: op.cit., p.51.

71. Introduction to Jenkins, Alice: op.cit., p.13.

They felt too that the suffering caused by illegal abortions fell mainly upon working-class women. They recognised that middle and upper class women did obtain ~~illegal~~ abortions but in the comparative safety of Harley Street; their exploitation was therefore financial. This practice, it was felt, should not be complained about 'except in so far as it meant that there was one practice for the well-to-do and another for the poor'.⁷² Dorothy Thurtle was convinced that society women who did not wish to be inconvenienced by bearing a child were allowed to obtain abortions for reasons of slight ill-health or for quite frivolous reasons. This was seen in stark contrast to working class women who were regarded as driven to abortion not mainly because of personal health considerations, but rather through concern for their families. In the 1930's the largest section of the community earned less than £3 per week and it was felt that women in this class had abortions because of the need to maintain an adequate standard of living for the family as a whole in terms of health, accommodation, education and general well-being.⁷³

Concern was also aroused over respect for the law itself. The disparity of treatment between rich and poor could lead to loss of faith in the principle of equality before the law and

72. Thurtle, Dorothy: *Abortion: Right or Wrong?*, T. Wenner Laurie Ltd., London, 1940, p.22.

73. ALRA Memo to Birkett Committee. ALRA Private Papers (uncatalogued).

thereby to disrespect for all laws. Also, abortion laws were viewed as out of step; public opinion was seen as being in advance of this; and they could not fail to be ineffective given that the sanction of the people was not behind them.

Society too was seen as suffering as a result of illegal abortions since many working days were being lost following incapacity as a result of such abortions. Again reliable figures are difficult to obtain but Glanville Williams has estimated, on the basis of figures given in Parliament, that on average some 76,000 working days were lost due to criminal abortions.⁷⁴

These concerns gave rise to a perceived need to alter the abortion laws. The need, it was felt, was greatest for women, thousands of whom broke the law yearly and with it their health. But it was also a burden for doctors who were not free to advise and act as doctors, and for the population as a whole since 'no one can wish our race to be increased by unwilling and conscripted parents'.⁷⁵ This concern led to the formulation in January 1936 of ALRA's express aim 'to repeal the present law' and substitute one, 'freeing the medical profession from all legal restrictions except those required by medical or humanitarian considerations'.⁷⁶

74. Introduction to Jenkins, Alice: op.cit., p.14.

75. ALRA Newsletter, February 1938.

76. ALRA Executive Committee Minutes, 24 January 1936.

The definition of the area of concern has important implications for the subsequent nature of the legislation to control the problem area. The definition of abortion by the reformers was not limited to any one aspect. For them in the early stages of pregnancy there was only a potential and not an actual human being. They took the view that the ordinary woman was not convinced that it was wrongful for her to endeavour to terminate a pregnancy in the early stages, if having a child would be a serious burden to her.⁷⁷ In part then their definition was that abortion was a legal problem in so far as the law was perceived as lagging behind public opinion and required reform.

But their definition also encompassed the view that this was a public health problem since many women suffered the effects of illegal abortion. Indeed, the public health definition was later to gain in prominence with the realisation that a pressure group must legitimise its fight in terms of generally held values in order to gain any ground.⁷⁸ Thus in 1943, Janet Chance wrote:

The best line at present to take is health and the benefit to the health of the mother likely to result from giving doctors greater legal protection in performing abortions for health reasons and by encouraging women to discuss their desire for abortion with a qualified doctor instead of going to a quack or performing the operation themselves.⁷⁹

Abortion was also presented as a medical problem not only in terms of the alleviation of suffering but as freeing the medical

77. Williams, Glanville: Address to ALRA AGM 1963.

78. See Clark, B.R.: Organisational Adaptation and Precarious Values: A Case Study, American Sociological Review, vol.21, (1956), pp.327-336.

79. Chance, Janet: Personal correspondence in ALRA private papers (uncatalogued).

profession from what were seen as unbearable restraints upon it. This presentation of the problem as medical appears to have been governed more by tactical considerations than anything else since at times members of that profession are subjected to much criticism, being, for example, described as 'reality evaders'.⁸⁰ Where legislation envisaged by a pressure group is permissive and requires professionals to implement it, then their co-operation [the doctors] needs to be secured.⁸¹

The early reformers felt strongly that abortion was primarily a woman's problem. It became popular with the later reformers to present Stella Browne as the outrageous radical advocating abortion on demand whilst the others advocated liberalisation as a solution primarily to a public health problem,⁸² but this is to oversimplify the position adopted by the early reformers as will be shown later. Certainly Stella Browne was a strong advocate of abortion on demand, defining abortion as 'the key word to a new world for women'.⁸³ Finally, the area is presented as a moral problem in that it was regarded as immoral of society to allow such hypocrisy and suffering.

80. Chance, Janet: *The Cost of English Morals*, Noel Douglas, London, 1932, p.47.

81. For a discussion and case-study see: Colombotos, J.: *Physicians and Medicare*, *American Sociological Review*, vol.34, (1969), pp.318-332.

82. Hindell, K. and Simms, M.: op.cit., Ch.3.

83. Browne, Stella: *The Right to Abortion* (1935) quoted in Hindell, Keith, op.cit.

(iii) Stereotype of the deviant

The stereotypical view of the deviant or offender also has important ramifications for the nature of the public response to that deviance. Gusfield makes the point that the designators of deviant behaviour react differently to different norm-sustaining implications of an act.⁸⁴ He distinguishes four main designations; the repentant deviant who accepts societal definitions of prescribed standards of behaviour but experiences moral lapses; the sick deviant to whom a hostile response becomes both inappropriate and illegitimate; the cynical deviant who is the professional criminal whose designation as deviant is supported by wide social consensus and whose deviance designation does not then threaten the legitimacy of the normative order; and the enemy deviant who is neither repentant nor sick but upholds an opposite norm and accepts his own behaviour as proper, denouncing the public norm as illegitimate. The enemy deviant designation is then the one which is the greatest stimulus to efforts to designate his act as publicly defined deviance. Gusfield uses this distinction to trace the development of efforts to control drinking habits through legislation.

The importance of the perception of the deviant is again illustrated by Troy Duster in his work on legislation governing drug-taking. He points out that it was not until the drug-taker was seen to be lower class, young and black instead of mainly

84. Gusfield, J.R.: *Moral Passage: The Symbolic Process in Public Designations of Deviance*, Social Problems, vol.15, pp.308-320 at 311.

upper or middle class, middle-aged and white that efforts were made to control drug taking despite the fact that the actual numbers involved were higher at the end of the last century.⁸⁵

In the previous chapter, the wide range of persons who could be accused of breaking the laws prohibiting abortion was delineated. ALRA, as mentioned earlier, wanted the actions of both women and doctors removed from the ambit of the criminal law and regarded the stigmatisation of both as ill-conceived. Yet it concentrated primarily on the 'wrongly' stigmatised woman. The woman who seeks abortion as a remedy to her situation was publicly presented by the reformers as a working-class, hard pressed married woman, the mother of several children:

It is not the thoughtless or debased woman who approaches the thought of abortion: it is the average⁸⁶ normal woman; it is every second or third woman we meet.

As such their designation does not readily fit any of Gusfield's categories exclusively. There is some of the repentant deviant in that in all other respects, the woman is seen as a normal law abiding citizen; there is some of the enemy deviant in so far as the reformers believed that women seeking abortion had a fundamental right to do so (even though they did not

85. Duster, Troy: *The Legislation of Morality: Law, Drugs and Moral Judgements*, Free Press of Glencoe, New York, 1970.

86. Chance, Janet: op.cit., p.52.

openly defy the law in the name of that right); there is more than a little of the sick if that notion is stretched to cover those who cannot help themselves in adopting certain responses through circumstances outwith their immediate control; and there is nothing of the cynical deviant.

The perception of the deviant as working-class and the persistent presentation of her as such may well explain why liberalisation did not come more quickly if Duster's analysis is correct. If upper-class women had not been able to secure discreet Harley Street abortions with comparative ease, then liberalisation might well have been achieved more quickly. It is difficult to find evidence of the way in which the woman seeking abortion was more widely regarded in society at large given that it was a topic rarely mentioned in the press. On the other hand, given that against those who fought to make contraception acceptable, a view often advanced was that contraception was the knowledge of the prostitute, it is not difficult to imagine that the abortion seeker was viewed as being unworthy of consideration.⁸⁷

(iv) Motivation

From previous case studies it has been possible to categorise or delineate certain bases of reaction through which concern arises.

87. See Wood, Clive and Suitters, Beryl: The Fight for Acceptance: A History of Contraception, Medical and Technical Publishing Co., Aylesbury (Bucks.), 1970.

These include self-interest,⁸⁸ moral indignation,⁸⁹ humanitarianism,⁹⁰ boredom,⁹¹ and status politics pursued through symbolic crusades.⁹² However, these categories should not be treated as mutually exclusive.

In ALRA boredom may well have been a motivating factor.⁹³ All the women were well educated, intelligent and most were upper middle class at a time when it was still not widely accepted that women, and especially upper middle class women, have full-time absorbing occupations and at a time when marriage still often acted as a bar to continuing in any occupation. It was acceptable, however, and even laudable, to devote their spare time to worthy causes. The fact that abortion law reform was not seen as a worthy cause would perhaps appeal to their radical free-thinking.

It may also have been in their self-interest to find such consuming concerns by providing them with a sense of fulfilment.

88. e.g. Dickson, D.J.: Bureaucracy and Morality: An organisational perspective on a moral crusade, Social Problems vol.16, (1968) pp.143-156.

89. e.g. Young, J.: The Drug-takers, Paladin, London, 1971.

90. e.g. Becker, H.S.: op.cit.

91. e.g. Platt, A.M.: op.cit.

92. e.g. Gusfield, J.R.: Symbolic Crusade, op.cit.

93. Cf. Platt, A.M.: op.cit. 'Portrait of a Child Saver: Louise De Koven Bowen and Jane Addams', pp.83-100.

Self-interest is, however, usually taken to mean direct financial self-interest in relation to reforming crusades and there is no evidence of abortion law reform bringing any financial gain to them or of any financial loss accruing to them as a result of the prevailing laws.

But self-interest can also be given another meaning in that they were all women of child-bearing age and there is evidence that at least one had personal experience of illegal abortion.⁹⁴ Although ALRA itself gave little attention to population policies or control save in a secondary way, such self-interested concerns figured largely in Mr. Justice McCardie's concern and he was regarded by ALRA as a liberal reformer whose influence on ALRA was considerable. In his already mentioned Galton Lecture, (1933) he advocated abortion liberalisation as well as sterilisation. He declared:

A large proportion of the nation represents not assets but liabilities. If birth control had been widely practised by the poor and inefficient during the last 30 years, the national difficulties of today would be infinitely less and the general standards of life would be considerably higher. It is a matter of regret that birth control started at the wrong end. It has developed amongst those who represent the best of our racial stock including the strongest sections of well organised labour. To get a strong and healthy nation it is essential that we breed from the right stock.

Given that one aspect of the social problem they perceived related to the degree of suffering experience as a result of illegal abortion, one would expect to find a sense of humanitarianism figuring largely in the motivating concern of the reformers and this is indeed widely evidenced. In a leaflet produced by ALRA

94. Hindell, Keith: Portrait of Stella Browne and Janet Chance, op.cit., and Jenkins, Alice: op.cit., p.21.

with a foreword by Douglas Houghton, Labour M.P., later Cabinet member and chairman of the Parliamentary Labour Party, husband of Vera Houghton, who was to become chairman of ALRA in the 1960's, and now Lord Houghton, this humanitarianism is most explicitly shown:

Many mothers take their lives into their own hands and bring their unwanted pregnancy to an end by most crude and horrifying methods. Others are 'helped' by a husband, friend or criminal abortionist. During the next few days, some of these women will be rushed to hospital where medical skill may enable them to escape death. A proportion will die, leaving a bereaved husband to bring up his orphaned children. When these tragedies ensue, the mother's death is recorded as being due to sepsis, gangrene or air embolism following illegal abortion. Most unskilled operations are not fatal, but an incalculable amount of ill-health and disease, particularly in later life, results from this back-street surgery. It is impossible to estimate the human suffering involved.⁹⁵

Within the early reformers' concern there is a fusion of moral indignation and symbolism. The concern for the woman who suffers because safe legal abortion was not available and has resorted to illegal abortion which inspired humanitarian considerations for their plight also inspires moral condemnation of a society allowing such suffering to continue:

Society as a whole is sympathetic to almost every tragedy except this [unwanted pregnancy]. It will wink at fornication, will view indulgently those who break its sexual code so long as they do so with discretion - but as soon as the indiscretion⁹⁶ of a pregnancy is committed, its whole attitude changes.

95. Abortion: Legal or Illegal, ALRA Publication, 1958.

96. Chesser, Eustace: Society and Abortion, ALRA Publication, 1949.

There is indignation at the hypocrisy of the medical profession which tells mothers not to produce any more children without advising them how to avoid doing so.⁹⁷ There is indignation over the slow compliance of local authorities to a memorandum on maternity and child welfare issued in July 1930 by the Minister of Health as a response to pressure from the Workers Birth Control Committee. This allowed local authorities to give advice on contraception to married women in cases where further pregnancy would be detrimental to health.⁹⁸ There is indignation over the fate of poor working-class women who suffer at the hands of unqualified operators while rich women have safe terminations. 'Must safe surgical terminations remain the prerogative of the rich?'⁹⁹

The abortion issue is also viewed as symbolic of the role and status of women in society; it is seen as a symbol of their oppression and subordinate status and that symbolic view contains much moral indignation. It was stated earlier that only Stella Browne is normally presented as being the reformer inspired by a sense of women's rights; but that obscures the real position. Janet Chance was a spirited exponent not only of the wrongness of what she saw as the subordinate role of

97. Jenkins, Alice: op.cit., p.21.

98. Of the 409 authorities in England and Wales only 246 took action, 79 of which gave advice at special clinics they set up, the other 169 referring women to hospital doctors or voluntary clinics.

99. Jenkins, Alice: op.cit., p.28.

women but also of her right to an enjoyable sex life and abortion. Her view of the subordination and oppression of women is nicely summed up:

Women are a fatally acquiescent lot. But if the 20th century thinks that the upheavals of its first three decades have finished the tale of women's dissatisfactions and of women's emancipation, it has a rude awakening before it ... Emancipated? With their bodies still at the mercy of one of the two strongest appetites? Satisfied? When one day women will look back on 1930 as a time of personal and bodily slavery for their sex too distressing to contemplate.¹⁰⁰

Dorothy Thurtle too demanded a happy sex life for women, 'free from shame, furtiveness and the fear of childbearing'.¹⁰¹

Mme Lorsignal, it is stated,

...did not dwell on the needs of the poor woman or the single woman but on the right of a woman to be a mother or not to be a mother according to her lights.¹⁰²

Only Alice Jenkins does not explicitly grant the woman herself such an absolute right although she credits Dr. Joan Malleson as 'endorsing the opinion of the founders of ALRA' in her statement that 'the ultimate decision must rest with the women themselves'.¹⁰³ Stella Browne paints her own view very vividly:

The present situation of enforced motherhood was a survival of the veiled face, of the barred window and the locked door, of burning, branding, mutilation and

100. Chance, Janet: op.cit., pp.54-58.

101. Thurtle, Dorothy: op.cit., p.32.

102. Quoted by Jenkins, Alice: op.cit., p.53.

103. Quoted by Jenkins, Alice: op.cit., p.51.

stoning and all the pain and fear inflicted ever since the growth of ownership and superstition came down on women thousands of years ago.¹⁰⁴

The typical sex life of women in Britain was seen as one of slavery:

Men in England shy at understanding sex but at least they enjoy sex. English women too often neither understand nor enjoy it. Many English married women are living adult lives with the sensations and emotions of children. The weaker women succumb to a slavery.¹⁰⁵

As well as indignation that this should be so there is also a humanitarian concern for the women themselves and for society as a whole. An increased knowledge of sexual matters is seen as bringing a growing realisation that to most people of normal instincts, a happy sex life is necessary and when it is absent, abnormalities, neuroses and other mental illnesses are likely to arise.¹⁰⁶ It was felt:

We are paying too high a price for our English morals. They hamper intellectual life and they debase sexual life. If sex could become "pleasant and inspiring" then it was felt that marriages would be stronger and ultimately society would be healthier. Moreover, if reproduction were handled wisely, then one of the main causes of poverty would be abolished and again society would benefit.¹⁰⁷

The laws regarding abortion are also taken as symbolic of whose morality dominated British society, imposed upon the great mass of people by a minority. There is a belief that the general

104. Quoted by Jenkins, Alice: op.cit., p.53.

105. Chance, Janet: op.cit., p.34.

106. Thurtle, Dorothy: op.cit., p.45.

107. Chance, Janet: op.cit., p.15.

public wished to cure this 'hidden evil but its efforts are hampered by a dogmatic minority which exercises influence out of all proportion to its members'.¹⁰⁸ There is no hesitation in naming this minority as certain sections of persons in high office in medical, clerical and legal circles,¹⁰⁹ or in stating that they claim to exercise a moral dictatorship over others and that the morality they impose can be defended only by 'the ignorant, disgusting the clear-sighted and hurting the helpless'.¹¹⁰ This enemy is most clearly seen as being composed of clericists and, in particular, the Roman Catholic Church,¹¹¹ and the imposition of their morality is resented as being against the freedom and tolerance which is extended to them as a minority group:

One section is using compulsion, the compulsion of ignorance and legal penalties to enforce its morality upon the rest. The priest, defeated as an incendiary of his fellow-man, is now politically and socially putting his hand over the mouths of the doctors, the scientists and the humanitarians. And social reformers still do deference to this morality even when they no longer endorse it.¹¹²

The influence of the Church must be reduced - these are our moral dictators.¹¹³

~~The~~ doctor¹¹⁴ is still the puppet here; the cleric holds the strings.

108. Jenkins, Alice: op.cit., pp.89-93 reporting on IPPF 4th International Conference held in 1953.

109. ALRA: Enquirers leaflet, ALRA Publication, 1951.

110. Chance, Janet: op.cit., p.20.

111. See Williams, Glanville: Introduction to Jenkins, Alice: op.cit.

112. Chance, Janet: op.cit., p.62.

113. Ibid. p.73.

114. Ibid. p.101.

(v) Aims and Tactics

ALRA members' shared beliefs and attitudes stemming from feelings of discontent and desire for action, from their belief that a problem exists and 'something has to be done about it' were fundamental in shaping the programme of action embarked upon and the aims they hoped to achieve.¹¹⁵ It follows then that, given the nature of their concern, an examination of their platform, of what they wanted and demanded (not always the same) is essential.

From their concern over the status of women and from their belief in the absolute right of women to decide the fate of their bodies, it would be expected that the removal of all restrictions upon abortion would be demanded. During this period they debated the relative merits of partial and possibly more immediate reform against the advocacy of certain fundamental principles. The latter would cost them the support inside ALRA of the half-way and less committed reformer yet as early as 1936 it was decided on as the only possible course of action since:

... ours is not a medical or legal right; it is an ethical one. To go for short range and diplomatic considerations would be to curtail ultimate freedom.¹¹⁶

Yet this determined attitude was not evident in their cautious demands contained in the basis of the association wherein they

115. See Heberle, Rudolf: *Collective Behaviour*, in Gittler, Joseph B. (ed.) *Review of Sociology: Analysis of a Decade*, John Wiley, New York, 1957, p.128.

For a case study see e.g. Olds, Victoria M.: *Freedom Rides: A Social Movement as an aspect of Social Change*, Social Work, vol.8 (1963) pp.16-24.

116. ALRA Private Papers (uncatalogued).

demand legalisation of abortion by qualified practitioners 'within such limitations as may be considered advisable'.¹¹⁷

What they wanted is then very different from what they demanded which suggests that from its inception the organisation realised that its formal demands had to appear reasonable and within acceptable boundaries. But, in their writings and speeches, they continued to advocate the extreme position perhaps in the hope that the moderate views would then appear reasonable and desirable and come to be widely adopted. Nowhere in their writings however is there evidence of this position being adopted on tactical considerations so that if it did achieve this end, it was an unintended consequence of their actions. There is clear evidence however of the tactical considerations governing their formal demands as opposed to their real wishes. As has been shown in their evidence to the Birkett Committee, after stating their ideal position which represented their real aims they added that;

... should this prove to be too far in advance of the average of publicly expressed opinion of the country then, as a minimum, this Association proposes that abortion should be made unmistakably legal when it is in the interests of the health of the mother.¹¹⁸

A discrepancy between the stated aims and the desired aims is also to be noted in ALRA's submission as to who should make the decision on abortion. The members of ALRA desired that the woman herself decide, yet their public line was that the doctor should

117. ALRA Annual Report 1936-37.

118. ALRA Memo to Birkett Committee: ALRA Private Papers (uncatalogued).

decide. Statements are frequently to be found in official ALRA literature similar to that of Eustace Chesser, an eminent member of the medical profession, that:

... it is not, however, suggested that a woman, married or unmarried, should be able to have her pregnancy terminated merely by asking for it. She is not the right person to judge ... the decision must be the doctor's.¹¹⁹

The failure of the Birkett Committee to recommend any sweeping changes in the law and, more especially, the perceived inadequacy of judicial precedent and governmental inertia over implementation of Birkett's proposals, all served to strengthen ALRA's aim of securing legislation to liberalise abortion laws. But the aims or goals of an organisation have important implications for the means chosen to achieve such goals. It was inevitable that ALRA should function as a pressure group on the legislature and this meant that to achieve even a modicum of success it would have to come to terms with accepted patterns of pressure group activities. If a movement is regarded as responsible, as an opponent but an honourable one which recognises the proper channels of dissent and 'the rules of the game' then it has a greater freedom to operate and its chances of being listened to are increased.

ALRA had presented both its extreme and its moderate aims to the Birkett Committee. Thereafter they avoided advocating the former in order to avoid being criticised as an extreme organisation convinced of the 'rightness' of its cause which

119. Chesser, E.: op.cit., p.8.

would make possibility of compromise very remote. An issue of this kind is almost always characterised by compromise. The task of a pressure group is made ~~harder~~ if the values on which its proposals are based are not firmly entrenched and legitimated but are already subject to criticism.¹²⁰

Abortion on request was an extreme view which had little agreement either in the larger society or in the law, whereas abortion on certain defined grounds relating to health and life was a moderate position which already received support from other groups and from the law itself. By 1954 therefore a decision had been taken by the executive committee deprecating any pronouncement purporting to be made under ALRA's auspices to the effect that women should have the legal right to abortion on request.¹²¹

With the outbreak of war the movement entered a period of relative quiescence which was followed in the post-war years by a gradual resurgence. In the immediate post-war years ALRA concentrated principally upon its educative function of publicising the abortion issue, trying to generate awareness of the defined problem and to gain support for its cause. A reform pressure group will usually also appeal to the public and try to shape public opinion by propaganda, often through the media. Such groups try to show the legislature the strength of feeling concerning an issue and to give the impression

120. Dickson, D.J.: op.cit., p.146.

121. ALRA Executive Committee Minutes 1954.

that, although not all members of the public have joined the movement, many are favourably disposed to it.¹²² To that end, ALRA sent copies of its literature and speakers to various groups, but concentrated mainly on women's groups, medical associations and legal bodies since it had variously defined abortion as a women's, health, medical and legal problem. There is some evidence that they enjoyed a limited success in this for several organisations passed resolutions during this period in support of legislation reforming the law.¹²³

In attempts to gain support and appear respectable, the aims of a pressure group are often couched in terms of general ethical principles. It tries to show that the demands which are being made are in accordance with traditional generally accepted values, for it is only when the goals of a group are seen as in accordance with the existing value system that it is likely to obtain legitimate status.¹²⁴ This helps explain the concentration by ALRA on the need to alleviate suffering, its stress on the public health aspects of abortion, and its presentation of the deviant as an exploited downtrodden woman. Against these humanitarian calls, a hostile response perhaps becomes illegitimate.

122. Steedman, Murray, S.: Pressure Groups and the American Tradition, *Annals of American Academy of Political Science*, vol.318-320, pp.123-129.

123. These included the NCW, WCG, the National Council of Equal Citizenship, the National Women's Citizens Association. For a full list see ALRA newsletters. In 1954 ALRA gained the support of the FPA.

124. Clarke, B.R.: Organisational Adaptation and Precarious Values: A case study, *American Sociological Review*, vol.21, (1955), pp.327-336.

In part this helps the legitimating process but an important aid to legitimation is the attachment of influential and prestigious people to the cause. Their involvement can be on two levels. They serve as legitimising agents by virtue of lending their name to a cause but they can also play an important part in generating a movement's ideology. To the cause of ALRA the involvement of Glanville Williams was of enormous importance in legitimating the arguments for reform and in shaping the nature of the reform that was eventually achieved. Although he was of the opinion that the only real solution to the problem was the granting of total discretion to the medical profession, he was prepared to accept the limitations placed on ALRA's activities and to work for an acceptable solution on moderate lines.

By 1950 ALRA had decided that it must turn its attention in a more positive manner to Parliament in which arena the struggle for reform would be resolved. There is some evidence¹²⁵ that it did not regard the securing of legislation as an immediately realistic outcome of its activities but thought it a useful exercise in generating interest within that body and thereby perhaps within the country at large.

12. Legislative attempts to reform the law regulating abortion

(i) Joseph Reeves' Bill 1952¹²⁶

In 1952 Joseph Reeves secured a low place in the private

125. ALRA Private Papers (uncatalogued).

126. Hansard: H.C.: vol.511, col.2506. For text see Appendix 1, 1.

members' ballot. As chairman of the Rationalist Press Association and a vice-president of the Ethical Union with many ties with the co-operative movement, he had established contacts with ALRA and he agreed to sponsor a Bill on abortion law reform which had its second reading in 1953. In drafting the Bill, ALRA considered whether it was advisable to follow the recommendations of the Birkett Committee in merely putting case law into statutory form or whether to press for further changes by making express reference to mental health and/or stating that therapeutic abortion ought to be legal 'when it appears medically or socially desirable either in her own interest or in that of the community'.¹²⁷ There is some contradiction in the reasoning which determined the contents of the final draft Bill for it was mooted that if the purpose was to have it passed into law then it would be necessary to drop all references to social desirability, but if the purpose was to arouse parliamentary and public opinion and discussion then it would be wise to keep them in. In view of the low place secured in the ballot and the unsympathetic climate of opinion prevailing in Parliament it was unlikely that the Bill would become law and the second aim and line of attack might then have had more publicity value.

Yet ALRA chose to proceed on the more moderate line and also dropped any explicit reference to mental health. In recognition of the interests of the medical profession and the

127. ALRA Private Papers on Reeves' Bill.

proposals of the Birkett Committee, it was intended in this Bill to provide that where abortion was undertaken to preserve the health as opposed to the life of the woman then a second opinion was necessary although it was not stated that the second opinion ought to be that of a specialist, as was desired by the medical profession. There is some indication that ALRA considered it was compromising quite enough by stipulating the a second opinion was required since this was going beyond the provisions of current case law.¹²⁸ The Bill did not follow the proposals of the Birkett Committee and the BCOG that notification of abortions should be compulsory and therefore reflected ALRA's views and those of the BMA.

The original short title of the Bill was:

'The Offences Against the Person (Amendment) Bill'

the long title being:

'A Bill to remove doubts concerning the legality of therapeutic abortion'

but the official Parliamentary draftsmen objected to the use of the word 'therapeutic' on the ground that members would be uncertain of its meaning and the long title was changed to:

'A Bill to amend the law relating to abortion'.

Thus reference to the therapeutic nature of the abortion was lost and opponents of liberal reform seized upon this to subject the Bill to much criticism. The term 'medical practitioner'

128. ALRA Executive Committee Minutes 1952.

was also missing from the first clause so that the Bill then read that 'no person shall be found guilty of ...' which again allowed for much criticism. The Bill was a hotch-potch of views designed to meet as little criticism as possible. It was not particularly well drafted by ALRA in its omission of reference to medical practitioners in clause 1(a) and the alterations required by the parliamentary draftsmen, viewed with suspicion by ALRA, further opened the Bill to criticism.

In the event, Joseph Reeves was left with one and a half minutes to address the House, the debates on the two preceding Bills having been prolonged, deliberately, or so ALRA thought. Prolonging discussion of a relatively uncontroversial Bill is a favourite tactic of opponents of another waiting in line. In the case of Reeves' Bill, it was the Simplified Spelling and the Pharmacy Bills which took up so much time. In his one and a half minutes, Reeves stressed that the object of the promoters of the Bill was not to extend the practice of abortion but to give unmistakable authority to the medical profession to act in the interests of the mother by putting into statute form the provisions of case law. But it was to no avail. It being four o'clock, the end of main business on Fridays, the day on which balloted private members' Bills are introduced, the Bill was talked out.

(ii) Lord Amulree's Bill 1954¹²⁹

On January 20 1954 Lord Amulree introduced a private member's

129. Hansard; H.L.: vol.185. 61.411. For full text see Appendix 1, 2.

Bill in the House of Lords on the lines of the Reeves' Bill but stipulating that the Bill applied to medical practitioners. This Bill introduced the concept of 'seriousness' to the degree of risk involved to the mother's health and specifically included reference to the woman's mental health. Amulree did not accept ALRA's proposal that one of the grounds on which therapeutic abortions could take place was that of grave risk of the child being born grossly deformed or with a physical or mental abnormality of such a degree as to require constant hospital treatment or hospital care throughout life.

The relationship between a private member and a pressure group is a sensitive one. Private members prefer to feel they are working with rather than being used by pressure groups so that the group must deal with the private member in a tactful way and not appear to be steamrolling him into action. This fact is recognised by David Steel in his foreword to Abortion

Law Reformed:¹³⁰

Parliament is sovereign. Pressure groups and specialist bodies do indeed influence what happens there, and rightly so. But, especially in private members' legislation, Parliament must exercise its collective judgment amid the tumult of conflicting advice. Its Bills are its own property and nobody else's.

It appears that ALRA on this occasion failed to act with sufficient tact. Alice Jenkins is reputed to have so alarmed Lord Amulree by her manner and proposals that he chose not to

130. Hindell, K. and Simms, M.: op.cit., Foreword by David Steel.

proceed with the Bill. On this occasion ALRA was totally responsible for its own lack of success.

(iii) Kenneth Robinson's Bill 1961¹³¹

Kenneth Robinson had long been a supporter of abortion law reform and had been one of the sponsors of the Reeves' Bill which had its second reading in February 1953. On February 10 1961 his Bill to amend existing abortion laws was given its second reading in the House of Commons. He had drawn tenth place in the private members ballot which again restricted the chances of the Bill ever becoming law.

The Bill was introduced under the title 'Medical Termination of Pregnancy Bill - A Bill to amend the law relating to the Termination of Pregnancy by registered medical practitioners' and was drafted by Glanville Williams. There is some indication that the new title was deliberately chosen in an attempt to assuage the passions normally aroused by the emotive term abortion.¹³² The Bill itself went in some ways a great deal further than Reeves' and would have provided in clause 1 for abortion on the grounds of

- a. preserving the life of the patient or
- b. avoiding grave risk of serious injury to physical or mental health or

131. Hansard H.C.D. February 1961: vol.634 cols.853-888. For full text see Appendix 1, 3.

132. ALRA Executive Committee Minutes 1961.

c. avoiding grave risk of the child being born grossly deformed or

d. where the pregnancy had resulted from intercourse which was an offence under ss. 1, 5, 10 or 11 of the Sexual Offences Act 1956 (rape, incest, under the age of 16) or when the pregnant woman was a person of unsound mind.

The Bill required the concurring opinion of a second medical practitioner and also set a time limit within which therapeutic abortion could take place viz. 13 weeks. The burden of proof in any prosecution that the operation had not been performed in good faith was to remain on the Crown.

The Bill therefore went further towards extension of the legal grounds for abortion than Reeves' by the provisions of ~~sub clauses~~ 1(c) and 1(d) but was stricter in sub clauses 1(a) and 1(b) in its requirements that the degree of risk involved to health be grave and the injury likely to result be serious. In clause 1(a-c) inclusive it was exactly similar to Amulree's Bill but sub clause 1(d) was a radical departure from the previous Bills. ALRA had been encouraged to include rape and incest by an interview with the BMA whose secretary had indicated that such provision met with the organisation's approval, but its reference to defectives reflected solely its own views. The Bill was again more restrictive than case law by its requirement of a second opinion but this, as has been noted, was favoured by the medical profession and the Birkett Committee

and again ALRA felt its inclusion would further the Bill's chance of success. The imposition of a time limit was a radical departure from case law and from the previous Bills in imposing a much more restrictive requirement.

That there was some disagreement between ALRA and Kenneth Robinson over the provisions of the Bill became clear in Robinson's speech to the House.¹³³ Robinson was very keen that M.P.s should be free from any organised pressure and asked ALRA to keep its lobbying and letter writing to a minimum.¹³⁴ In his speech to the House, Robinson described his Bill as a modest and moderate measure, the primary purpose of which was to clarify the present situation by putting into statute form present case law. Having announced that that was his intention, it is not surprising that he followed this by saying he was prepared to reconsider the grounds proposed in sub clauses 1(c) and 1(d) relating to deformity, sexual offences and defectives but that sub clauses 1(a) and 1(b) must stand as merely embodying case law.

The position adopted by the Government to a private member's Bill is crucial to its chances of success. At best, its attitude must be one of neutrality but its chances are increased if that neutrality is benevolent. The Government was merely neutral towards Robinson's Bill. David Renton, Under-Secretary of State for the Home Office put the Government's views.¹³⁵ He

133. Hansard; H.C.: 10 February 1961: Cols.862-866.

134. ALRA Executive Committee Minutes 1961.

135. Hansard; H.C.: 10 February 1961: Cols.873-877.

stated that the Bill was so limited in scope that it would make no real impact on the position of back-street abortion and pointed out that the Bill was more restrictive than case law by its provision of a time limit of thirteen weeks. He strongly criticised measures 1(c) and 1(d) which were designed to help solve the problem of back-street abortion on legal and technical grounds of difficulty of proof and of being open to abuse and expressed the view that the Government hoped to see the Bill amended in committee to avoid those difficulties. If this were not done then the Government would have to consider what advice to give the House on the Bill's third reading. The Government was then neutral to the second reading but not to the Bill itself.

If the Bill had passed its second reading then it is unlikely that it would have emerged from its committee stages in anything approaching the same form given the Government's attitude and the general opposition to sub clauses 1(c) and 1(d). In the event it never reached the committee stage. The Bill had had almost two and a half hours of debate and both its promoter and another M.P. had tried to move the closure but this motion 'that the question be now put' will only be accepted if the Speaker feels that adequate discussion has taken place. With the attempt to move the closure a group of Roman Catholic M.P.s indicated they would like to speak, although they had not so indicated previously, so the Speaker refused to put the question and the opponents successfully kept the debate going

past 4.00 p.m. and the Bill was lost. As in the Reeves Bill, the rules of parliamentary procedure determined its outcome.

13. Other influences 1936-61

As already mentioned, ALRA was the only body between 1936 and 1961 which consistently advocated reform and tried to generate awareness of the perceived problem and to gain support for its cause. From the time the Birkett Committee reported until the end of this period under examination only sporadic interest was shown by other bodies.

(i) The Medical Profession

The medical profession was virtually silent during this time except for a press statement issued by the BMA at the time of Reeves' Bill.¹³⁶ This reiterated the Association's view of 1936 that the medical profession had no particular competence to decide the fundamental question of whether it was right to perform therapeutic abortion. Nevertheless, it welcomed the opportunity for unequivocal statutory clarification of whether in fact therapeutic abortion was permissible under the existing law. The BMA advocated that the decision to terminate should be left to the doctor concerned (within the limitations imposed by

136. Contained in ALRA's Private Papers (uncatalogued).

law) and advised that any doctor proposing to carry out a therapeutic abortion should obtain a second professional opinion. It did not however specifically state that obtaining such an opinion should be a statutory requirement.

(ii) The churches

The Roman Catholic church consistently opposed any moves to liberalise abortion laws since its teaching asserts that human personality commences at conception when the foetus is given a soul and that if a foetus dies without baptism, it is condemned to eternal punishment.¹³⁷ It is from the view that human personality starts at the moment of conception that there stems one argument which was to gain much prominence, viz. that concerning the right to and the sanctity of life. The Catholic view of marriage has always been that the primary end of marriage is the procreation and education of children. This belief had been restated in 1931 by Pius XI in an encyclical stressing the unnatural character of contraception which was seen as shameful and intrinsically vicious and was further emphasised in 1951 when the church's objection to contraception and artificial insemination was again reiterated in a Papal pronouncement which also laid down that abortion was never justified even in cases of saving the life of the mother.

The Church of England's statement to the Birkett Committee had been a reiteration of a resolution passed at the 1930 Lambeth Conference and it was not until 1958 that the church reconsidered

137. For discussion of these issues see Williams, Glanville: *Sandity of Life and the Criminal Law*, Faber and Faber, London, 1958, especially Ch.6 and Stevas, Norman St.John: *Life, Death and the Law*, Eyre and Spottiswoode, London, 1962, especially Ch.2.

its viewpoint. In that year abortion was again generally condemned 'in the strongest terms' but on this occasion there was added a statement that this general condemnation did not apply when there was a genuine medical necessity to save the life of the mother.¹³⁸

The Methodist Church had neither given evidence nor provided a statement of its viewpoint to the Birkett Committee. Between 1936 and 1961, the first reference to the church's concern on abortion is to be found in a footnote to the 1939 Declaration of the Christian View of Marriage and the Family which states:

While no scriptural precept can be adduced which makes contraception within marriage sinful, the case is very different for abortion. The Christian principle of the sanctity of human life applies to this and (almost without exception) condemns this ...
... The uncertain judgement of ill-informed public opinion makes ¹³⁹decisive Christian witness desirable on this matter.

This footnote does not however state which exceptions were not condemned. Moreover, despite the statement that decisive Christian witness was desirable, the issue was given no further consideration until 1952 when, in response to the Pope's Address to Midwives of the previous year, the opinion of the Methodist Conference was redirected to the 1939 Declaration.¹³⁹ The next occasion on which the Conference considered its position was in 1961 when the 1939 Declaration was revised to drop reference to ill-informed public opinion and the desirability of Christian witness but to include the church's condemnation of

138. Church of England Report of the Committee on the Family and the Christian Community 1958, 2, 148.

139. Declaration of the Methodist Church, 'Christian View of Marriage and the Family: Parenthood and Family Planning', s. vi.

abortion as a means of family limitation.¹⁴⁰

The Church of Scotland discussed abortion on only one occasion in this period when, in 1952, it opined that when a choice has to be made between the life of the mother and that of the foetus then the life of the mother should have priority.¹⁴¹

(iii) The larger social environment

Reference has already been made to the women's groups which passed resolutions during this period advocating reform. Perhaps the most important resolution, in terms of influence, to be passed however was that of the Magistrates Association in 1955. An ALRA member who himself took the extreme view that abortion was a woman's right, R. Pollard JP, was instrumental in securing this resolution. The resolution called for legalised therapeutic abortion where there was risk of death or of serious injury to the health of the mother and where there was a risk of the child being born defective, either physically or mentally.

Within the larger social environment, abortion was very much a 'taboo' subject. Newspapers rarely mentioned it at all, far less advocated reform of the law and, for many years, neither television nor radio regarded abortion as a 'suitable subject for

140. Revision of s. vi. of Declaration of Methodist Church on the Christian View of Marriage and the Family: Parenthood and Family Planning, June 1961.

141. Report of the Committee on Church and Nation to the General Assembly of the Church of Scotland, 1952.

broadcasting' so that it was not until 1955 that the BBC included a factual talk by a solicitor on the abortion laws and not until the 1960's that any real interest was shown in the topic by the mass media.

Given both this general lack of interest in the subject of abortion law reform and the fact that it was 'taboo', especially prior to any Bill being introduced in Parliament, which contrasts sharply with the level of discussion reached in the period to be examined in the next chapter, one aspect of the Bills presented in Parliament must be recognised as being to make the subject more discussable; an object which ALRA had hoped to achieve.

14. Conclusion

In its activities between 1936 and 1961, ALRA had matured from an organisation convinced in the absolute rightness of its extreme views and its decisions never to compromise on their beliefs to an organisation which recognised and adapted to the 'rules' governing pressure group activity. Yet the activities of a pressure group and the chances of its success also depend on the social environment within which it works,¹⁴² and on the activities of other groups interested in

142. See Perrow, Charles: *Organisational Prestige: Some Functions and Disfunctions*, *American Journal of Sociology*, vol.66, (1960-61), pp.335; and Thompson, J.D. and McEwan, W.J.: *Organisational Goals and Environment: Goal Seeking as an Interaction Process*, *American Sociological Review*, vol.23, at p.22.

the same area.¹⁴³ The environment in which ALRA started its campaign was one in which abortion was regarded as almost a 'taboo' subject. It was rarely mentioned by the mass media and the churches on the whole condemned its practice and did not welcome reform. The medical profession desired only limited measures and only a few groups publicly demanded legal reform.

Any attempt to secure legislation by a pressure group is made easier if the personal value-system of the members of the legislative body is favourable to the reform desired.¹⁴⁴ This was overwhelmingly not so regarding abortion. In debates on maternal mortality rates in the House of Commons, abortion was rarely mentioned. In particular no government during this time perceived the need for reform. R.A. Butler, the Home Secretary, when asked whether he intended to implement the Birkett Report replied that 'Legislation would be highly controversial and I have no reason to think that there is any practical need for it'. All these factors combined against ALRA's success but when the opportunities arose in Parliament their failure was due principally to the rules of parliamentary procedure governing private members' Bills and, in one case, to ALRA's failure to recognise that private members can rarely be persuaded beyond the point of their own principles.

143. See Blau, P.M. and Scott, W.R.: *Formal Organisation*, Routledge and Kegan Paul, London, 1963.

144. Levine, J.P.: *Methodological Concerns in Studying Supreme Court Efficacy*, *Law and Society Review* vol.4, 1970, pp.583-592.

CHAPTER THREETHE STRUGGLE FOR THE 1967 ACT1. Introduction

It is axiomatic that an explanation of the growth of concern over any area of behaviour and the demand for legislation does not wholly explain the emergence of nor the form of any ensuing legislation since only some legislative campaigns are successful. Many groups may exist, all interested in abortion law reform, but with diverse views as to the extent and nature of the desired legislation. The success each one achieves may be assessed by examining the shape of the legislative attempts to reform and the reasons for their success or failure. In order to facilitate this examination and avoid repetition of the viewpoints adopted by the interested groups, this chapter will deal firstly with the positions adopted by the groups and secondly with how and why those positions affected legislative attempts to reform.

2. ALRA(1) The Association in 1961

By 1961 ALRA had been in existence for twenty-five years and its membership was composed of people advanced in years. Janet Chance had died in 1953 at the age of sixty-eight, Stella Browne in 1955, aged seventy-five, and Alice Jenkins and Dorothy Thurtle had retired. In the late 1950's the

executive committee had realised that the movement would decay if new, younger members could not be found, but no determined effort was made to do so. The fighting spirit of the early years had gone; the group continued to meet but the atmosphere was more of a social event for old friends than a dedicated reform pressure group.¹

ALRA's lassitude is evidenced by their total lack of effort to capitalise on the tragedies resulting from the drug thalidomide in 1961. ALRA had been fighting for legal abortion in just such situations yet the events passed unnoticed in terms of ALRA activity. Yet thalidomide did have tremendous repercussions on ALRA in that it acted as a spur to a whole new generation of reformers who were horrified at the effects of the drug and horrified that the law allowed no remedy for the woman faced with a high risk of producing a grossly deformed child. Some of these people were already members of ALRA but had played no active role and others joined in the early 1960's. In any organisation containing members from different generations problems may arise over aims and tactics.² So it was with ALRA. The immediate problem facing the younger reformers was to attain positions of influence within the movement and so direct its actions on a rejuvenated course. This was achieved, not without some bitterness and rancour, in the years

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1. Interview with Mrs. Garrett, Secretary of ALRA at that time.
 2. Gusfield, J.R.: The Problem of Generations in an Organisational Structure, Social Forces, vol.35, (1956-57), pp.323-330.

1962-63, and a new leadership was established for the next decade or so.³

(ii) The new personnel

The new principals were Vera Houghton, Diane Munday, Madeleine Simms and Alastair Service. Dilys Cossey also played an essential, although less public, role in the organisation as administrative secretary. Peter Diggory, a consultant gynaecologist, provided medical advice during these years and Glanville Williams, Professor of Law at Cambridge, continued as chairman of the organisation, bringing to that role a keen involvement in the practicalities of legislation.

Of the organisation's membership at this time more can be said than in the early years.⁴ In total it never passed the thousand mark and was often much lower. A survey conducted by ALRA itself found that two-thirds were women, two-thirds were married, two-thirds had had higher education and one-fifth were doctors or in para-medical occupations. One in three of the women members had required an abortion at some stage in her life and one in four had obtained one, mostly legally and mostly privately. Seventy-four per cent were atheist or agnostic

3. For the mechanics of this changeover see Hindell, K. and Simms, M.: op.cit. ch.5.

4. Hindell, K. and Simms, M.: op.cit., p.120.

although nearly all had been brought up in the conventional religious denominations, especially Anglican (50 per cent), Non-Conformists (13 per cent) and Jews (13 per cent). Politically the group was composed of 51 per cent Labour, 21 per cent Conservative and 13 per cent Liberals. Apart from membership in the Family Planning Association, the National Trust and the Fabian Society, little interest was shown in other reform groups.

With the sole exception of Alastair Service, the key personnel in ALRA were again women. Once again they were essentially middle class, the wives of husbands who could support their increasing involvement in ALRA. Again all were well educated and articulate with forceful personalities. Their political outlook was left of centre and they had many important links with the Labour Movement. Later, Christopher Chataway's wife was to be instrumental in establishing ties between ALRA and Conservative M.P.s of whom her husband was one. Vera Houghton's influence was considerable. Her experience as Executive Secretary of the International Planned Parenthood Federation (IPPF) was to prove useful to the running of the new ALRA and as she was married to Douglas Houghton, a Labour M.P., she was able to gather valuable knowledge of the mechanics of parliamentary procedure and possibly had a ready made channel of communication with those holding influence in the legislature.

(iii) Definition of the social problem

This was similar to that of the previous generation. The

suffering (perceived as unnecessary) on the part of women; the restrictions on the medical profession; the risk to public health; the existence of what was seen as an archaic and thus ineffective law; its differential application in operation to segments of the community according to wealth; the number of working days lost due to abortion; these all figured in ALRA literature.⁵ What is added to this is the belief that all babies should be wanted and loved⁶ and that those who were not often suffered emotionally and physically as a result. What is missing from any official ALRA literature at this time is the presentation of abortion as a woman's problem, not in relation to her health but as of her right.

The operation itself was seen as a comparatively simple surgical technique, especially when carried out in the first three months of pregnancy and by skilled doctors. In 1964 a comparison was made of deaths resulting from childbirth, legal abortion and criminal abortion⁷ and in this context, childbirth presented most risk to the pregnant woman. The use of reference models both to exemplify the need for change and to encourage compliance is an established pressure group technique.⁸ In the fight to liberalise abortion laws in Britain, figures were obtained from countries abroad, where abortion was legal on wide

5. See ALRA Publications: What is ALRA?; What help can ALRA give?; A Clergyman's view; A Doctor's view; A Lawyer's view.

6. Abortion - Some Facts, ALRA Publication.

7. Ibid.

8. Colombotos, J.: op.cit.

grounds. These showed that it was not an intrinsically dangerous operation and was often safer than childbirth. This was especially so in countries where the operation was carried out early in pregnancy with the consent of only one doctor and where social grounds constituted separate criteria. The risks were higher in countries where it was necessary to obtain the consent of a panel of referees; and where decisions to terminate were based on consideration of medico-social grounds and where terminations were performed rather later in pregnancy.⁹ Furthermore, the death rate from abortion (legal, criminal and spontaneous) was very much lower in countries with more extensive grounds for legal abortion than the United Kingdom.¹⁰

(iv) Stereotype of the deviant

In their designation of the deviant, the new ALRA group did not depart widely from that of the previous generation. In their leaflet In Desperation, however, there is an important addition to the usual category of hard pressed, working class mothers of several children by the inclusion of a new category; that of the middle class woman. ALRA's principal speaker, Diane Munday, had herself sought and obtained an abortion after much difficulty and with what she describes as considerable

9. Cernock, A.: Les Autorisations d'interuption de grossesse en Tchechoslovakquie, Gynaecologia, vol. 160, pp.293-299. Quoted in ALRA leaflet, Abortion Statistics from Eastern Europe.

10. Proceedings of International Planned Parenthood Federation Conference 1964. Quoted in ALRA publication, Abortion Statistics from Eastern Europe.

humiliation. In her numerous talks to different groups she stated so publicly. This presentation is of importance in terms of the reaction to the deviant. By presenting herself in a manner which in effect said 'I am just like you - would you so subject me to this humiliation?' much support was probably gained for the cause of abortion law reform. It is impossible to assess accurately if this was so but by openly admitting her abortion, Diane Munday's experience was that women often approached her at the end of meetings to discuss their similar experiences. Many resolutions were passed at this time advocating reform of the law.¹¹

(v) Motivation

The motivation to action again covered boredom, self-interest, humanitarianism and moral indignation and, to some extent, symbolism or status politics, albeit the last being concealed from the public.

The women involved, with the exception of Vera Houghton, were the mothers of small children which made working away from home very difficult, but they at the same time felt a need to keep their minds alive to problems existing outwith their own family circles. ALRA relieved the boredom they experienced by providing contacts, stimulation and fulfilment. At the same time, self-interest was operating in that they were going through the child producing years and felt they might require an abortion

11. Among those resolutions were those passed by the Socialist Medical Association, University Humanist Association, Co-operative Women's Guilds, National Association of Women's Clubs, National Council of Women, National Union of Townswomen's Guilds.

themselves. Diane Munday had experienced that need and her attempts to secure a legal abortion had brought home to her the hurdles which had to be overcome. Thalidomide had made the personal need appear more imminent to all the ALRA women.

Self-interest in the financial sense is more difficult to discover; where it is evidenced it does not apply to the principal ALRA people but to some of the lesser figures, and did not take effect until after the Abortion Act 1967 had been put into operation when at least two of the ALRA members who had served on the executive committee established links with private clinics which grew out of the implementation of the Act. There is some evidence that this was not an unexpected bonus accruing from the Act but a consciously desired consequence. There had been some discussion within ALRA of the possibility of setting up a social agency to deal specifically with the abortion problem, perhaps on the lines of Alcoholics Anonymous, but also perhaps with an attached abortion unit. It was decided however that these plans 'ought to remain secret until the law had changed'.¹²

There is evidence that humanitarianism remained prominent among the motivating factors. All ALRA literature stressed the effects of illegal abortions on health. The view that those who suffered most were the poor was also frequently reiterated.¹³ Moral indignation at a society which was seen as turning a blind eye to the suffering caused by its archaic laws was also present.

12. ALRA Private Papers (uncatalogued).

13. See e.g. ALRA A.G.M. Report 1964.

In the earlier history of the movement, a large motivating factor lay in the view that abortion was symbolic of the role and status of women in society. This did not figure in official ALRA literature or public statements in the 1960's. Yet it cannot be dismissed as a motivating factor on the part of ALRA members and especially of the key members of its executive.

Vera Houghton has described the effect of Glanville Williams' speech to ALRA in 1964 (which advocated the decision to abort be left entirely to the woman and her doctor) as terrifying the other members by the extremity of his views. Yet it was not the expressed views per se that were terrifying but the perceived effect they would have on the cause's aims. It was felt that to stress the women's rights aspects of abortion would be to postpone indefinitely the likelihood of reform. She has said that 'it was expediency which made us decide not to emphasise this aspect in the 1960's, although most of us felt it was a woman's right to decide; it was too far in advance of public opinion'.¹⁴ Alastair Service also holds the view that it is a woman's right to control her own fertility and that women will not achieve any real measure of equality until they have both the recognised right and the facilities to do so.¹⁵ Diane Munday, Dilys Cossey and Madeleine Simms¹⁶ all espouse similar viewpoints

14. Interview with Vera Houghton, February 1975.

15. Interview with Alastair Service, February 1975.

16. Interviews with Diane Munday, Dilys Cossey and Madeleine Simms, February 1975.

but with Madeleine Simms the motivating factor goes further than an involvement and interest in women's role and status in society. Her involvement in ALRA is much more a reflection of her philosophy on societal relations which she herself labels social libertarianism. The opponents of liberal abortion laws were again seen as principally the Roman Catholic Church and conservative entrenched elements of the medical profession which were seen as moral authoritarians.

(vi) ALRA's aims

In the movement in the 1960's there was again the realisation that its aims must not appear too extreme or much support for its cause would be lost. There is clear evidence that the demands of the organisation were again much more modest than its ideal aims. In January 1964, at a meeting of ALRA's executive committee, it was declared that, for publicity purposes, it was essential for the association to have a clear statement of its aims. In the formulation of these aims regard for many considerations was operating. The clearest statement of the discrepancy between formal aims and desired aims is to be seen in the statement:

While fully agreeing that nothing short of a return to the position before 1803 would put an end to backstreet surgery, the committee was of the opinion, that it would not advance the Association's cause in the public eye to say so at present.

The formal aims were consequently presented as being:

to secure such changes in the law as will provide that a registered medical practitioner may lawfully terminate a pregnancy at the request of the patient or her guardian:

- (1) when it is necessary for preserving the physical or mental health of the woman
- (2) when there is serious risk of a defective child being born
- (3) when the pregnancy results from a sexual offence (such as rape, incest or intercourse with a girl under sixteen).¹⁸

That the stated aims did not include any reference to social conditions, which had long been recognised by ALRA as the prime cause of women seeking abortion and had been so recognised in both the BMA report in 1936 and the Birkett Committee Report in 1939, is again an indication of ALRA's willingness to compromise on its goals. It was not until Lord Silkin's Bill to amend the law on abortion had been presented in the House of Lords and support manifested for the clause contained in his Bill which would have allowed termination where the pregnant woman's capacity as a mother would be severely over-strained that this was adopted as a specific ALRA aim. There was still a reluctance on the part of ALRA to endorse the need for a second opinion in decision making and a decided aversion to notification. It was also hoped that it would be possible to avoid the imposition of a time limit on the period in which abortions could be performed but, if not, that this could be set sufficiently late to cover cases where women did not seek help until quite late in their pregnancy.

18. ALRA Annual Report 1963-64.

(vii) Tactics and the larger social environment: a favourable climate of opinion?

The recognition by ALRA of tactical considerations in the formulation of its aims has already been noted, but these considerations also governed its choice of means. In attempts to gain public support and demonstrate that support, it continued to press both literature and speakers upon organisations and it used its members within such groups to promote resolutions. It also developed an important tactic in its use of opinion polls, some conducted by ALRA itself and others by National Opinion Polls (N.O.P.). These polls were aimed at assessing public opinion and the opinion of doctors and clergymen.

Two surveys were done by ALRA on medical practitioners in late 1964, one in south-east London and the other in Cumberland. Both produced results suggesting that almost 70 per cent of doctors supported ALRA's aims. The reliability of ALRA's surveys can be questioned particularly in the light of the low response rate (750 out of more than 2,000 cases) but they served their purpose in drawing attention to the issue in the press and were quoted in Parliament.

The N.O.P. polls all demonstrated support for reform. In March 1965 a survey of public opinion showed that two-thirds of the electorate thought abortion should be legal in some cases and one-quarter that it should be illegal in all cases. N.O.P.'s

conclusion was that opposition came from old people, those living in Scotland and the north of England, working class people and Roman Catholics. This survey was followed a year later by another testing women's attitudes towards abortion law reform. Results were released at a press conference with David Steel and the supporters of his reform Bill. This poll demonstrated that support among women was strongest where the baby was likely to be born deformed (91 per cent) and weakest where living conditions made it undesirable to have a child (36 per cent). Eighty-five per cent favoured abortion when the woman's health was at risk, 82 per cent when the woman had been raped, 65 per cent when the pregnancy was the result of incest and 50 per cent when the girl was under sixteen. Support for easier abortion was least among Roman Catholics yet more than half were favourably disposed to reform. This poll also attempted to estimate, on the basis of the women's response, the number of abortions occurring each year and this was thought to be approximately 85,000, of which 40,000 were successful and, of these, 31,000 were illegal.

The effect of such polls in Parliament, where they were treated as authoritative indications of the need and degree of support for reform, led to further surveys being undertaken. ALRA carried out one on clergymen in south London and the southern Home Counties, again with a poor response rate, which indicated that, of Protestant clergy, 84 per cent favoured abortion to preserve physical health; 83 per cent to preserve mental health; 68 per cent to avoid the birth of a defective child; 84 per cent when pregnancy resulted from rape; 74 per cent when from incest; and 49 per cent when the girl was under sixteen.

Fifty-seven per cent thought that social conditions should be taken into account when assessing the risk to health. Ninety-five per cent of Roman Catholic clergy did not approve of abortion under any circumstances but five per cent approved in the case of rape. An N.O.P. survey, in February 1967, of the general public on their attitude to David Steel's Bill showed that 65 per cent favoured a social clause (the over-strained mother clause), 80 per cent were favourable to the inclusion of a clause relating to deformity in the foetus and 80 per cent to the inclusion of a sexual offences clause. Most importantly, 44 per cent of Roman Catholics were favourable to the inclusion of a social clause.

In response to the claim by parliamentary opponents of reform that the medical profession was opposed to reform, a further survey by N.O.P. was commissioned to inquire into the attitude of members of the profession. This was completed in May 1967, when Steel's Bill was undergoing changes in its committee stages, and 65 per cent were in favour of the Bill or its further liberalisation, 21 per cent wished to see the grounds more restricted and 10 per cent were opposed in principle to all abortions. That these polls did much to aid ALRA's cause in Parliament there can be no doubt.

In attempts to influence public opinion and the media, advertisements were placed in all the major daily newspapers but appeals for letter writing were restricted to those who were

perceived as the more 'sophisticated' readers of the quality newspapers and magazines. The policy on tactical activities at that time was that although no effort was to be spared, no effort was to be wasted. To that end all advertisements ran for a trial period at the end of which a type of Which analysis was done to find out which brought most action in terms of the costs involved and those which showed a poor response were discarded.¹⁹ The tone of the advertisements was deliberately kept unemotional and every effort was made to produce 'facts' which legitimised beliefs. There was a perceived recognition that 'we are up against emotional reactions, people's inhibitions, their fears and guilt, tradition and ignorance' and that publicity had then to be 'carefully reasoned, the art of the hidden persuader'.²⁰

That ALRA succeeded in generating both interest and support in its aims there can be no doubt for, as has been already mentioned, numerous organisations passed resolutions in favour of reform during this period.²¹ Throughout the period many

19. ALRA Private Papers (uncatalogued).

20. ALRA Private Papers (uncatalogued).

21. See ALRA Annual Reports 1961-67 for a full list of those resolutions, included in which were the British Humanist Association, the Family Planning Association, The Socialist Medical Association, The National Council of Labour Women, The Society of Labour Lawyers, The National Union of Townswomen's Guilds and the National Council of Women.

newspapers ran articles on abortion and television at last decided it was suitable subject matter for discussion and many programmes were devoted to the issue. Significantly, there was public recognition of the woman seeking abortion as including many middle class women 'who could be the wives or daughters of anyone'.²²

Four main methods were used to assess parliamentary support for reform. Keen supporters in the Commons put down early day motions calling for reform. The chief value of such motions lies in the publicity they receive from the press but they can impress upon party leaders and the Government the weight of parliamentary opinion behind distinctive views. From the signatures these motions attracted, it was possible to assess the number of supporters. Individual ALRA members also wrote to their own M.P.s and their replies were forwarded to the ALRA lobbyists who also spent three evenings a week talking to M.P.s in the House. Two mass lobbies were held which again gave a good indication of support and finally ALRA sent out group letters to all M.P.s. Files were kept of all changes of opinion and at any by-election or general election any change of attitude was noted and with each stage in the passage of the 1967 Abortion Act the degree of support was continually tested. By these methods ALRA knew that before Renée Short's Bill in June 1965 it had approximately 150 supporters; that by February

22. See e.g. Shirley Conran's article on abortion in About Town, June 1961. For an account of the position adopted by the mass media see Hindell, K. and Simms, M.: op.cit., especially pp.127-129.

1966 this support base had grown to 340 and by October 1966 it was known that some 436 members supported some measure of reform although not necessarily all aspects of Steel's Bill.²³

ALRA was then a reform group which tactically was very thorough. Not only was there a recognition of the technical requirements of pressure group activity but there was an adaptation to and manipulation of them in a highly efficient manner. All energies were directed at Parliament and those avenues which gave no return were quickly discarded. But in many respects its task in the 1960's was considerably easier than in its early days and it owed a considerable debt to the founders who had diligently and gradually opened up abortion as a subject for discussion. By the 1960's contraception had come to be regarded as respectable and desirable, as is perhaps evidenced by the growth of Family Planning Association clinics. Certain countries abroad pursued liberal abortion policies, and the whole decade was seen at that time as being one enhancing individual liberties, questioning seemingly established values and as a reforming era in general, in which Parliament tackled a number of controversial issues, e.g. capital punishment, homosexuality and divorce law reform.

3. The Medical Profession

From the moment it became known that Lord Silkin intended introducing in the House of Lords a Bill to reform the abortion

23. ALRA Private Papers (uncatalogued).

laws, the medical profession once more examined the issue and sought to have its views recognised in any legislation which might ensue. The profession recognised that the possibility of reform was greater than in previous decades. There were numerous discussions of the issue in the medical journals, in contrast to the small attention the subject had previously received.

(1) BMA reports

The BMA tried to persuade Lord Silkin that he should delay his Bill until the profession had reported its views on reform, but when he refused to do so an interim report was published in January 1966 which dealt specifically with the provisions of Silkin's proposed Bill.²⁴ A Church of England committee had just completed its report Abortion: An Ethical Discussion in December 1965 and this was considered by the BMA committee in conjunction with Silkin's Bill. Specifically, the interim report recommended that on the question of maternal health as a medical ground for the termination of pregnancy the form proposed by the Church of England should be accepted:

1. It shall be lawful for a registered medical practitioner to terminate pregnancy in good faith in the reasonable belief that if the pregnancy were allowed to continue there would be grave risk of the patient's death or of serious injury to her health or physical or mental well-being.

24. BMJ (Suppl.) 22 January 1966.

2. In determining whether or not there is grave risk of serious injury to health or physical or mental well-being account may be taken of the patient's total environment, actual or reasonably foreseeable.

The provision in Silkin's Bill relating to foetal deformity was approved by the committee, which however declined to approve any statutory ground allowing for abortion as a matter of course for girls under the age of sixteen. It expressed the view that this should be considered in assessing the risk to health. Doubt was expressed regarding the provision of abortion following rape because of the difficulty of proof in such circumstances, but as the Bill made provision for termination in rape cases only where a medical certificate had been obtained of evidence of sexual assault 'freshly after the fact', the BMA was prepared to endorse this ground. The committee also recommended that the decision to terminate should be made by at least two doctors and that the operation should be carried out by or under the direction of a consultant gynaecologist who was under contract to either an NHS regional board or board of governors of a teaching hospital. The committee also favoured notification to the Chief Medical Officer of the Ministry of Health but added that it should be confidential and disclosure of individual cases made only on authorised request.

In June 1966 the committee presented its main report.²⁵ It

25. BMJ 2 July 1966.

advocated that the ultimate decision on termination had to rest with the doctor in charge of the case and to depend upon individual circumstances.

It rejected the need for precise definition of the grounds for legal abortion and thus completely reversed its 1936 position. Allowance for the risk of foetal abnormality had always been favoured by the BMA but it now recommended that this should only be taken into account in decision making. In this report it was further recommended that rape and other sexual offences were similarly only to be taken into account in assessing risk to health and were not to constitute a ground per se. The problem of the girl under the age of consent was again rejected as a statutory ground.

The BMA advocated that the need to provide security for the pre-viable foetus could best be met by regulating the qualifications of the persons carrying out the procedure and the places where it could take place, and that the decision to terminate should be taken only after adequate consultation with professional colleagues. To that end it advocated that the decision required at least two medical opinions. It was suggested that the opinions which were most relevant were those of the family doctor and the doctor responsible for performing the operation and that the latter ought to be an NHS consultant or someone specially approved for the purpose by

the Minister of Health. It was also suggested that in this case the doctor should have been on the full register of the GMC for a specified time.

It was suggested that abortions should be carried out only in an NHS hospital or 'other such premises as approved for the purpose by the responsible Minister of the Crown' and that such approval ought to be subject to annual review. Whilst moving from its 1936 position of advocating doctors of recognised status, the committee also overturned its previous position in advising favourably on the provision of abortion notification. It was stated that this was not regarded as a safeguarding procedure but as a fact-finding measure for statistical research purposes. It suggested that notification ought to be made within fourteen days of the operation, by the person performing it, and should give the name of the practitioner providing the second opinion, the grounds on which the decision to terminate was made, the age of the woman, and the number of previous pregnancies. Such notification was to be confidential, made to the Chief Medical Officer of Health and inspection of the records was to be carried out only on the granting of a court order.

(ii) Report(s) of the Royal College of Obstetricians and Gynaecologists (RCOG)

The RCOG's immediate reaction to Silkin's Bill was that it

should be postponed indefinitely and a Royal Commission set up 'to establish the facts'. When this delaying tactic failed, the RCOG set up a special committee which reported in April 1966.²⁶ The College saw no urgent need for reform for the law's current state was regarded as commending itself to most gynaecologists by leaving them free to act in what they considered the best interests of each individual patient. But it did commend clarification to make it positively clear that there were circumstances in which abortion was justified and that these circumstances were only in cases where the life or health of the mother was seriously at risk or where there was a substantial risk that the child, if born, would suffer from such physical or mental abnormalities as to deprive it of any prospect of reasonable enjoyment of life. In deciding whether abortion was justifiable, the RCOG recommended that:

The person performing the operation (and only he can judge) has to satisfy himself that the risk of the pregnancy to continue is, for that particular woman, greater than the dangers of terminating it.

Numerous safeguards against abuse of any ensuing law were advocated, for example at least two medical opinions should be necessary in decision making, one of which ought to be that of the consultant gynaecologist expected to undertake the operation. But the report adopted a much more restrictive approach in advocating that gynaecologists' sphere of influence should also

26. BMJ 1966 1, 850.

extend to the choice of the other doctor certifying the need for the operation and that the second person should also be a senior member of a hospital staff. The RCOG also recommended that abortions be performed only in NHS hospitals or places specifically approved for the purpose by the Minister of Health. Finally it recommended a system of compulsory notification to the Ministry of Health.

In December 1966 a joint report of the RCOG and the BMA was published.²⁷ By this time the BMA appeared to have adopted all but one of the RCOG's recommendations. It refused to accept that the opinion of a consultant gynaecologist be written in as a requirement to the Bill although saying that this would probably evolve as normal practice; nor did it accept that the gynaecologists should choose who was to give the second opinion. The joint report also recommended that the words 'serious' and 'grave' be removed in clause 1(1)(a) in relation to the risk to life and injury to health of the pregnant woman. It respectively advocated that it was both unnecessary and undesirable to frame the indications for termination too narrowly. The BMA also had reservations about expressly qualifying that the risk of serious abnormality to the foetus be substantial although expecting that a criterion of substantial risk would become normal in practice.

The core of the report lay in its objections to clause 1(1)(c) and (d) as specifying non-medical grounds, as their

27. BMJ 31 December 1966.

inclusion would lead to serious practical difficulties, and probably to an excessive demand for termination on social grounds, which it regarded as unacceptable. Again, it was stressed that each case ought to be decided individually and that any express reference to the factors mentioned in clause 1(1)(c) and (d) (although only permissive) would 'inevitably lead the public to believe that termination would automatically be carried out in the instances mentioned'. The report did however suggest that a sub-clause be added to the Bill which would have the effect of allowing 'the patients' total environment actual or reasonably foreseeable' to be taken into account in deciding whether or not to terminate the pregnancy in the interests of the mother's health. This view had first been advanced in the report of the Church Assembly Board for Social Responsibility. The joint report again emphasised similar safeguards regarding place of termination and notification as contained in other reports.

(iii) Report of the Medical Women's Federation

The report of a special sub-committee set up by the Medical Women's Federation was published in October 1966.²⁸ In tone, it was very similar to those of the BMA and RCOG. It recommended that specific indications should not be listed in the Bill and that instead there should be one general clause making it lawful to terminate a pregnancy in the interests of the physical

28. BMJ 1966 2, 1512.

and mental health of the mother, taking into account her whole family situation and circumstances past, present and future. It also stressed the desirability of the decision being made on the advice of at least two medical practitioners but did not recommend any restrictions regarding the status of either or both practitioners. Again it was recommended that the place of termination, if not an NHS hospital, should be specially approved by the Minister of Health and that a system of notification be established. Two minority reports were attached to the memorandum: one by a Roman Catholic, Professor Ruth Bowden, who took the view that the 'deliberate prevention of implantation or deliberate procurement of abortion, however tragic in the circumstances, constitute murder' and who could not therefore endorse the majority report; and the second by a pathologist, Amy Paintin, who took the view that 'the right to decide whether to continue a pregnancy or not and the moral responsibility for that decision rests with the pregnant woman and with no-one else'.

(iv) Report of the Royal Medico-Psychological Association
(RMPA)

This Association, representing about three thousand psychiatrists in this country, produced a report rather different from the other medical associations.²⁹ It argued that in addition to traditionally accepted medical and psychiatric criteria, all social circumstances should be taken into account and if, after

29. BMJ 1966 2, 42.

considering these factors, a psychiatrist formed the opinion that the mental health of the mother and of the whole family would be protected by termination, then it should be lawful for him to recommend it. The Association, however, was against laying down specific grounds in the Bill, preferring to have a general clause which was then open to interpretation. Specifically, the Association did recommend inclusion of reference to possible foetal deformity. Notification and abortion decision-making boards or panels were heavily criticised as leading to unnecessary stress. Although agreeing that decisions to terminate required two medical opinions, the RMPA did not wish to see any statutory delineation of the status or speciality of the doctors involved. However it envisaged that in normal practice they would be the woman's general practitioner and a consultant gynaecologist. Nor did the report make any recommendations regarding the place of termination.

(v) A comment on the stance of the medical profession

In the reports of the medical profession in the 1960's, the BMA moved furthest from its previous position as stated in 1936, whereas the RCOG maintained its conservative attitude. Both bodies recommended provisions which were much more restrictive than prevailing practices in medical procedures generally or abortion in particular. No other operation was required to be performed by a consultant and at this time abortions

could be carried out by any medical practitioner. Nor was it legally necessary to obtain two medical opinions although this was normal procedure. Similarly, no precedent existed in legislation requiring a medical operation to be performed in a particular place, nor did current law require notification. The suggestion, however, that the qualifying adjectives, 'serious' and 'grave', be removed from clause 1(1)(a) may be regarded as more liberal than the views expressed in earlier reports or as laid down by case law.

The more restrictive recommendations, if accepted, would have had considerable consequences on the legislation's implementation. The proposal that only a consultant gynaecologist could perform the operation and make the decision to operate, in conjunction with another registered medical practitioner, especially was restrictive since there were approximately only five hundred consultant gynaecologists employed by the NHS and the distribution throughout the country was by no means uniform. When this is considered with the proposal that the Act be framed in general rather than specific terms to allow consideration of individual cases on their merits by at least one consultant gynaecologist, its effect would have been to restrict severely the number of abortions which could take place given the conservative attitude of that branch of the profession.

As such the groups, whilst failing to stop the legislation being passed, tried to build in barriers to its implementation

which would seriously undermine the intentions of those proposing the reform. That the medical profession adopted such a stance and that there existed a diversity of opinion within the profession itself deserves closer examination of the underlying concerns behind the specific recommendations of the reports.

(vi) Underlying concerns and motivations of the medical profession

It has been shown that different specialisations within the medical profession held different viewpoints and it is axiomatic that the different branches in forming their viewpoints relied upon their specialised interests and knowledge. This can be clearly seen from the RCOG's insistence upon the views of a consultant gynaecologist operating in the decision making process and from the RMPA's insistence that all factors, including social ones which affect physical or mental health, be taken into account in that decision making. That polarisation of viewpoints and concerns arose as a result of the division of labour within the profession is so far obvious. But polarisation can also occur within professions and within branches of professions according to the values which individual members within the profession and/or its branches hold.³⁰ From correspondence in the medical journals it is obvious that this

30. Bucher, R. and Strauss, A.: Professions in Process, American Journal of Sociology, vol. 66, pp.325-334.

was true of the medical profession over abortion. That such different values exist gives rise to different opinions as to what kind of work the profession should be doing and which tasks should take precedence. In so far as these competing definitions arise, a struggle for status will take place as each segment vies with others to have its definitions accepted as the 'legitimate' ones to hold. This struggle was principally concerned with the code of ethics and conceptions of health and illness.

It has been suggested that when the medical profession faces a new and difficult problem there will be a revival of interest in its code of ethics in the hope that in the code there will be found a solution to the difficulties.³¹ Medical ethics in western societies are based on the oath which is generally attributed to Hippocrates but may have been influenced by Pythagoras and his followers who may have introduced the Christian element based on the precept 'Thou shalt not kill'. One part of the modern translation reads:

I will give no deadly medicine to anyone if asked; nor suggest such counsel; and in like manner I will not give to any woman a pessary to induce an abortion.³²

The Declaration of Geneva, 1947, formed the basis for an international code of medical ethics intended to replace the Hippocratic Oath, and contains the statement:

I will maintain the utmost respect for human life from the time of conception.³³

31. Ormrod, Sir Roger: Medical Ethics, Symposium on Medicine, Science and Humanity, in *BMJ* 1968, 2, 7.

32. Quoted in BMA Handbook 'Medical Ethics', 1965, p.1.

33. Ibid. p.2.

It is this concept of respect for human life around which much of the controversy regarding abortion arose. The commitment to save life raises problems where two lives are involved whose interests conflict as in the case of abortion and this is further complicated in that the Declaration of Geneva also imposes a commitment to preserve health:

The health of my patient will be my first consideration.³⁴
 When the mother's life is threatened by the continuation of pregnancy then the doctor can feel that he is justified in performing an abortion on the grounds that he is preserving life. When the grounds for abortion relate to health however, this dilemma is greater since there is no clear definition of what constitutes health or ill-health. The apparent conflict between the values of preserving health accounts for much of the polarisation of medical opinion regarding abortion. The conflict may be particularly acute because it usually involves obstetricians at least some of whom regard abortion as the:

'most unpleasant and unsatisfactory operation we are called upon to perform, since it conflicts with our most basic training and philosophy'.³⁵

The balance between the two commitments, to life and to health, was a crucial theme in the abortion debates. It can be said generally that those who favoured no change in the law or measures of only a restrictive nature emphasised the medical

34. Ibid., p.2.

35. Morris, N.: Abortion and the Health Service: the hospital. In, FPA Symposium, Abortion in Britain, Pitman (Medical), London, 1966, p.85.

profession's commitment to life and also employed a narrow definition of health whereas those who favoured liberal reform including clause 1(1)(c) and (d) (the social clauses) of Steel's Bill argued that the doctor's prime duty was to the health of the patient and also favoured a wide definition of health based upon that of the World Health Organisation (WHO):

A state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.³⁶

It is the conception of 'health' which is the key to the determination of how the potential conflict between duty to life and to health is solved. Those who argued from a broad definition of health contended that it was within the doctor's sphere of duty and competence to promote this type of health, i.e. not only should the doctor take into account social factors but he could measure and evaluate them. Baird wrote:

The physical and emotional components of ill-health cannot be disentangled and both are profoundly affected by the environment.³⁷

Those against the extension of the law to include social factors argued that these were not medical and as such were not within the doctor's province; Lord Brock:

It is not an acceptable medical code to perform an operation on non-medical grounds.³⁸

The distinction between what is medical and not medical was never

36. Quoted in Mechanic, D.: Medical Sociology, Collier Macmillan, London, 1968, p.49.

37. Baird, Sir D.: Letter to The Scotsman, 15 February 1966.

38. Lord Brock: Letter to The Times, 3 February 1967.

clearly defined. But both groups did agree that only doctors could make the distinction.

If a continuum of conceptions of health is imagined with a narrow disease model at one end and the WHO definition at the other, then it is possible to see the reports of the different segments of the profession as outlined above on that continuum. The RCOG holds the narrow disease concept of health at one end, the RMPA at the opposite end, and the BMA somewhere in the middle. These conceptions of health influenced the reactions to the proposals in the Abortion Bill(s) but their importance in terms of motivation lies in the vested interests and desire to retain or achieve status through the acceptance as legitimate of one set of definitions over another.

The concern generated over status was also manifest in the concern to retain professional autonomy. Professional autonomy is conditional, however, in that it is the State which grants it but this appears to have been forgotten by the medical profession.³⁹ For most medical and surgical procedures, not only are the criteria for decision making determined by, and within, the profession, but the patient may never know what these criteria are. This mystique may be seen to support the authority of the doctor vis a vis the average patient. But the perceived threat contained in the Abortion Bill(s) lay in the fact that the permissible criteria were to be decided by representatives

39. Friedson, Elliot: Profession of Medicine, Dodd Mead and Co., New York, 1972, p.24.

of the lay public, and these criteria were theoretically within the public's knowledge.

All four reports emphasised that not only should the medical profession be consulted before legislation was passed but also that decisions to terminate had to be made only in individual cases and that only doctors possessed the necessary knowledge to make such decisions. Consequently specific grounds for termination should not be embodied in legislation. The BMA in particular had moved from its 1936 position when it stated that it was a matter for the whole community to decide. The change in attitude, given the concern for autonomy, may be explained in part by the advent of the NHS in the intervening years and the perceived increase in the State's regulation of medical affairs. The concern for professional autonomy is illustrated in the following:

Whether or not a pregnancy should be terminated is a question which can be decided only in the particular case. The ultimate decision to advise termination of pregnancy lies with the doctors ⁴⁰. the law should not seek to influence this decision.

Doctors would not wish a situation to be created by law which would encroach upon their independence in matters requiring professional and ethical judgement. Spelling out in detail when a doctor should or should not have the right to induce abortion would have the effect of introducing an element of coercion in the sense that in each defined situation the patient might reasonably expect the doctor to acquiesce and the role of the surgeon or gynaecologist would be reduced to that of a technician carrying out an objectionable task. ⁴¹

Both pro- and anti-reformers were equally concerned with the likely

40. Proceedings of Council of BMA, BMJ 1966, 2, 10 (Suppl.).

41. RMPA. Memo on Therapeutic Abortion, British Journal of Psychiatry, vol. 112, 1966, pp.1071-73.

effects of the Bill on professional autonomy but their interpretation of the effects is different. Those who saw it as restricting medical freedom did so on the grounds that it was a directive from the Government:

Parliament should not dictate⁴² to doctors how they should treat their patients.

and also because it would lead to indirect pressure being brought to bear on individual doctors by their patients who would view any specific grounds contained in legislation as granting rights rather than being indications. Those who supported the Bill, however, considered that it would augment the profession's freedom:

Mr. Steel's Bill is permissive and in no way obligatory and I welcome it because it removes the only outside pressure that can ever override a doctor's decision,⁴³ namely a restrictive law.

The desire for freedom from pressure is related to the desire to retain control over the responsibility for decisions which all segments of the profession wanted. Implicit in the arguments advanced regarding decision making was that the doctor 'knew best' both in relation to their patients and to society:

The problems are peculiarly human and intimate matters which we as doctors are trained to face.⁴⁴

The assumption that doctors did know best was rarely questioned. Only one explicit example of this questioning was found:

It is often a matter of pride that we know best for our

42. Dignan, J.: Letter to BMJ, 1967, 3, 52 (Suppl.).

43. Potts, Malcolm: Letter to BMJ, 14 January 1967.

44. Cocks, D.P.: Letter to BMJ, 17 December 1966.

patients; how closely this is allied to a benign paternalism or even a savage despotism, I must ask you to examine your consciences.⁴⁵

The desire to retain control over decisions is clearly linked to the desire to retain status:

I for one have no intention of being reduced to a licensed abortionist.⁴⁶

The BMA should take a stand and tell the country we will not be the tool of various sections of the community.⁴⁷

The desire to avoid status degradation was perhaps strongest among gynaecologists and obstetricians, e.g. the RCOG:

Obstetricians and gynaecologists are not to be regarded as technicians whose functions include applying their technical skills, irrespective of their knowledge and expertise.⁴⁸

Although there was unanimous agreement by the profession as a whole that the decision to terminate must rest with the profession, that is to keep 'outsiders' out, there was considerable conflict between its various segments as to which segment was most eminently qualified to make the decision. Again, as shown by the RCOG report, gynaecologists were most vociferous in their assertion that they, above all, were equipped to make the decision by nature of their specialist knowledge and function in the operation. In their desire to retain

45. Lennox, I.G.: Problems of the Abortion Act in General Practice. In The Abortion Act 1967; proceedings of a symposium, Pitman (Medical), London, 1969, p.19.

46. Bushby, A.F.: Letter to BMJ, 23 March 1966.

47. Heath, A.: BMJ, 1969, 3, 14 (Suppl.).

48. Findings of a survey into the first year's working of the 1967 Act, BMJ, 1970, 2, 529.

responsibility for decision making, many individual gynaecologists reiterated the views in the RCOG report which had wished to extend the gynaecologists' sphere of influence to the choice of the second opinion, normally that of another consultant gynaecologist. They tended to label those who performed abortion on social grounds as inferior beings, lacking in conscience:

Presumably the [psychiatrists] as abortion advocates, ... have no conscience in these matters and do not share the surgeon's high regard for foetal life.⁴⁹

Even the so-called abortionist working with his pseudo-psychiatrist will⁵⁰ have to move to an "approved" nursing home.

Psychiatrists however had not sought to influence the choice of decision maker, stating that the choice depended upon the circumstances of the individual case. The RCOG also sought to exclude general practitioners from the decision making process whereas the BMA saw no need for a consultant gynaecologist to be expressly provided for in legislation.

Three arguments for the doctor's control over the decision can be discerned. The first was that women's judgment is unsound in early pregnancy and she cannot therefore make a rational decision. The second was that once a child is born there is an unfolding of maternal instinct. The third, and most often voiced, was that the profession was trained to make such decisions. But implicit in many statements were arguments outwith the technical realm of competence of doctors and containing statements which were quasi sociological-cum-moral arguments about

49. Sim, Myre: Letter to BMJ, 20 May 1967.

50. McLaren, Professor H.: Letter to BMJ, 25 March 1967.

the effects of abortion,⁵¹ for example a concern over 'what it does to youth, to marriage and the family'.⁵²

This tends to support the view that a doctor in his work does depend and rely heavily upon the authority of his moral senses independently of the general authority of his science and that status is accorded to him as much for the mystique with which he surrounds his work as for his technical knowledge and competence.⁵³

(vii) The medical profession as a pressure group

In matters regarding health and especially definitions of 'illness' the opinions of the medical profession are likely to take precedence over the opinions of laymen.⁵⁴ That the profession sought to control legislation over its work is obvious. The fact that the profession is composed of its own associations makes it an 'interest' group concerned chiefly with protecting the interests, financial or professional, of its members. As such it is in a very influential position. The strength of the BMA in particular has long been recognised.⁵⁵ In

51. For further discussion of implications of this see: MacIntyre, Sally: *The Medical Profession and Termination of Pregnancy*, M.Sc. Thesis, University of London, 1971.

52. McLaren, Professor H.: Letter to BMJ, 1967, 1, 758.

53. Friedson, Elliot: op.cit., p.170.

54. Friedson, Elliot: *Professional Dominance*, Atheston Press, New York, 1970, p.1.

55. See Eckstein, H.: *Pressure Group Politics: The Case of the BMA*, Allen and Unwin, London, 1960.

general it may be said that the BMA is the most influential of the three associations, with the RMPA weakest. The profession is so powerful since it is both established and respected. Moreover Governments depend upon it for the administration of the NHS and it is consulted by the Health Ministry on everything which is not a matter of routine administration.

Its effectiveness is to some extent also due to public attitudes towards it and the prestige and status awarded it. Such attitudes give it a particularly powerful position vis à vis public officials compared with other pressure groups of a 'cause' nature.⁵⁶ This power is partly derived from its established contacts with civil servants and ministries but also from the practice of consulting experts when legislation is proposed dealing with matters involving technical expertise. The role of such experts in framing legislation has been discussed by many including Becker⁵⁷ and Duverger,⁵⁸ a specific example of this being the role of the medical profession and especially of psychiatrists in framing sexual psychopath laws.⁵⁹

A pressure group is most effective if it presents a unified front which the medical profession failed to do. The different positions adopted by each segment could perhaps have been

56. Ibid. p.70.

57. Becker, H.S.: The Outsiders, op.cit.

58. Duverger, M.: Party Politics and Pressure Groups: a comparative introduction, Methuen, London, 1972.

59. Sutherland, E.H.: Diffusion of Sexual - Psychopath Laws, American Journal of Sociology, 1950, pp.142-148.

dismissed as arising from their various spheres of competence but the fact that segments arose within segments, holding different definitions and values, tended to undermine its position of authority as a whole and was seized upon by ALRA in an attempt to convince Parliament that the views of the profession should not be adhered to too closely. The NOP polls on general practitioners' attitudes also served as a reminder that the official spokesmen for the profession were not necessarily representative of the ordinary members, since considerations of time, money and security of practice are important determining factors in the decision to play a part in the politics of a profession. The workload of a middle class practice and the income from a secure consultant position all make for easy participation in medical politics, resulting in the leaders coming predominantly from the more conservative branches of each segment.

The abortion issue revealed the **split** within the profession and within its segments. The BMA, perhaps realising the importance of unity, hastened to assure the Home Secretary and Minister of Health that they were united:

During the committee stage of the Bill, the views of individual doctors received very considerable publicity, with the result that a misleading impression was given that the profession is widely divided on the issues in the Bill. The Council has never doubted that the profession as a whole is strongly in favour of the views expressed in the report of its special committee.⁶⁰

The official spokesmen used the traditional forms of interest group tactics; consultation, negotiation, and public statement. Each

60. BMJ 1967, 2, 66 (Suppl.)

segment tried to delay the possibility of reform by calling for fact-finding surveys and Royal Commissions. Those individual practitioners who were most against new abortion legislation tried to show that such practices were totally contrary to established generally held principles and societal values. They described the reform movement as a 'sinister plot of hideous atheistic expediency' characteristic of an era of 'sex-sodden prurience'.⁶¹ They denied that women who sought abortion were hard-working overstrained mothers and suggested instead that they were pleasure seekers with little sense of responsibility. To what extent the medical profession succeeded in its attempts to influence the legislation embodied in the 1967 Abortion Act will be evaluated later in this chapter.

4. Other influences

In addition to the memoranda prepared by the medical profession, there were ~~numerous~~ detailed reports from many other groups, some of the more influential of which will now be considered.

(i) Report of the Church Assembly Board for Social Responsibility

The Board approached the problem of legislating on abortion from a standpoint similar to that of the medical profession, viewing the issue as primarily a medical problem. The report took the form

61. Donald, Professor Ian: Quoted in New Humanist, May 1972.

of a discussion of Lord Silkin's Bill to amend the law.⁶²

In defining the problem as medical it did not favour the inclusion of explicit reference in legislation to deformity, sexual offences, or over-straining the mother's capabilities (clauses 1(1)(b)(c) and (d)), although it did not wish to negate the intentions underlying these clauses. Consequently, the vital part of the Bill was seen to lie in clause 1(1)(a) allowing termination when there would be grave risk of the patient's death or serious injury to her health. To encompass some of the intentions of clauses 1(b) (c) and (d) the committee recommended the addition of 'risk to physical or mental well-being'. It therefore favoured a broad conception of health. This is also exemplified by the suggestion to add a sub-clause to clause 1(a) to allow social conditions affecting health and/or well-being to be taken into account in decision making. It was proposed that the sub-clause should read:

In determining whether or not there is grave risk of serious injury to health or physical or mental well-being, account may be taken of the patient's total environment, whether actual or reasonably foreseeable.

The Board also recommended a statutory requirement to have two medical practitioners certifying the operation and hoped that Parliament would stipulate that the second opinion be one of consultant status. Notification of all abortions was further suggested as a necessary safeguard against abuse of the law. It did not wish to see any statutory time limit up to which terminations could be performed and consequently recommended the

62. Church Assembly Board: Abortion: An Ethical Discussion 1965.

deletion of the whole of clause 2 of Silkin's Bill.

(ii) Church of Scotland

The Church of Scotland's Social and Moral Welfare Committee reported in May 1966.⁶³ Its prime consideration was the inviolability of the rights of the foetus and consequently the report condoned abortion only where there was serious risk to the life or grave injury to the physical or mental health of the pregnant woman or where there was a high risk of serious foetal deformity. It did not however wish to see a separate deformity clause but preferred this factor to be taken into general account. The committee expressly rejected the woman's being either defective or under the age of consent as sufficient grounds in themselves to justify termination. It failed to consider the case of pregnancy arising as a result of a sexual offence. The Church of Scotland endorsed the Anglican Report regarding notification and the need for a second opinion.

(iii) Methodist Church

The July 1966 Methodist Conference resolution on abortion was more liberal in its recommendations than either the Anglican or Church of Scotland reports.⁶⁴ The Methodists wished to see 'the provisions of the law being related to the actual reasons why many women seek abortions' and accordingly recommended legislation to cover cases where there was risk to life or health, whether

63. Church of Scotland: Supplementary Report of the Social and Moral Welfare Committee, May 1966.

64. Methodist Church: Report on Abortion, 1966.

physical or mental, and whether before, at, or after the birth of the child; where there was risk of serious deformity ~~in~~ the child; where pregnancy occurred as a result of a criminal offence and where the woman's capacity as a mother was severely overstrained. The Conference did not suggest a need for two opinions but suggested that the practitioner performing the operation should be a senior gynaecologist and that the operation should be performed only ~~in~~ an NHS hospital or a specially approved place. It also suggested that any Act be reviewed at the end of five years.

(iv) Other churches

The Methodist position was very similar to the resolutions passed by the Congregational Church of England and Wales and the Free Church Federal Council except that neither accepted the 'capacity of the mother' clause and the latter restricted the 'sexual offences' provision to cover rape alone. They did however wish to see specific references to the other grounds for abortion. Of the Protestant Churches only one, the Free Church of Scotland, did not wish to see any extension of case law. It stated in its report that if the Bill became law, 'society would enter into the era of disposable babies' and 'another slide down the slope of ~~the~~ permissive society will have been registered'.⁶⁵

(v) Joint report of The Law Society and The British Academy of Forensic Sciences

The memorandum⁶⁶ prepared by this body was one of the last to

65. Free Church of Scotland: Report on Abortion, May 1966.

66. Memorandum of the Joint Committee of The Law Society and The British Academy of Forensic Sciences, January 1967.

be produced which had influence in shaping the views of the legislature. It stated that the law as it stood was both uncertain and unsatisfactory and ought to be re-stated so as to 'embrace responsible medical opinion'. It specifically rejected the view that therapeutic abortion should be placed on the same footing as most other operations believing that women in the early stages of pregnancy were unlikely to make a satisfactory decision and also that abortion on request would lead to intolerable pressures on the medical profession.

It recommended that social factors were insufficient to justify abortion but should be taken into account in assessing risk to physical or mental health or 'the future well-being of herself and/or the child'. But it went further than this in stating that any inclusion of reference to social factors warranted a system of control. To this end it suggested that the Minister of Health should set up a panel of registered medical practitioners approved for the purposes of the proposed legislation. It recommended that therapeutic abortion should be available when 'there was substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped'. Further safeguards against abuse were envisaged in the need for two opinions, notification, and that the operation should only be performed in an NHS hospital or place approved by the Minister for the purposes of the Act.

5. Opponents of abortion law reform

(i) Roman Catholic Church

The Roman Catholic Church continued to condemn all abortion reform. Following a meeting of Roman Catholic Bishops in London in October 1966, a statement was issued from Cardinal Heenan's Westminster headquarters which re-affirmed the Catholic view that 'abortion and infanticide are abominable crimes'.⁶⁷ Support for the official view of the Catholic Church came from many Catholic organisations, including the Guild of Catholic Doctors, Catholic Women's Groups, the Link Society and the Lamp Society.⁶⁸ All of these groups emphasised their definition of abortion as murder and their view that 'if this Bill is not defeated it will be the beginning of the end of traditional Christian morality in this country'. Moreover, to extend the law on therapeutic abortion was seen as opening the door to 'the sterilisation of the unfit, and the killing of the sick and old and the socially useless ...'.⁶⁹

But Catholics were not as united as one might expect from the absolutism of the church's teaching. The journal of the Roman Catholic marxists, *Slant*, argued for a radical revision of the church's attitude to abortion.⁷⁰ It expressed the view that life only assumed a human form after birth for it was only then

67. Catholic Herald, 28 October 1966.

68. For a description of these groups see: Barr, John: *The Abortion Battle*, New Society, 9 March 1967; and Close-up on the Abortion Lobby, The Scotsman, 3 December 1966.

69. Lamp Society Pamphlet, Wanted.

70. Copy of article in ALRA's Private Papers (uncatalogued).

that life became social and meaningful. Although it did not recommend abortion, it did state that in some cases it was justifiable because a human life was balanced against an inhuman object.

(ii) Society for the Protection of Unborn Children (SPUC)

SPUC was formed in January 1967 when the committee stages of David Steel's Bill were about to start. It has become the main organisation fighting for the amendment of the 1967 Act and as such its aims, motivations and tactics will be more fully discussed in later chapters; a brief mention of the organisation will suffice here. It was founded specifically to fight the passage of David Steel's Bill and as such it constituted a counter-reform group of a 'cause' nature. Its definition of abortion was overwhelmingly that abortion was a synonym for killing and that any taking of life had to be justified. Consequently it was not against all abortion but could only accept its necessity when there was serious risk to life and grave injury to health.

In its conception of health SPUC argued for a narrow 'disease' model rather than the wider WHO definition. From this standpoint it rejected all social factors as grounds for abortion either in themselves or as indications in any assessment of health. In the early stages of its campaign SPUC attempted to use the traditional delaying tactic of calling for the setting-up of a Royal Commission or interdepartmental committee. To that end it

organised petitions and marches but by that time David Steel's Abortion Bill was well under way in Parliament.

6. Legislative attempts to reform

(i) Renée Short's Bill 1965⁷¹

In June 1965 Renée Short, a Labour M.P., sought leave to introduce a Bill under the procedure known as the Ten Minute Rule which allows a private member to introduce a Bill at the end of Question Time on Tuesdays and Wednesdays. The Bill had little chance of success since the procedure **allows** only one Ten Minute Rule Bill to be introduced each Tuesday and Wednesday and one week's notice must be given. As the name implies the sponsor of the Bill is given only ten minutes to introduce it and any opposition is similarly limited after which a motion for leave to **introduce** the Bill is put.

In an attempt to avoid opposition, the Bill introduced was designed on the same lines as Robinson's in 1961. It hoped to legalise therapeutic abortion in cases involving serious risk to the life of or grave injury to the physical or mental health of the pregnant woman; or to avoid grave risk of the child being born grossly deformed; or where pregnancy resulted from a sexual offence.

Termination on the last three grounds was to require the

71. See Hansard H.C. 15th June 1965, vol.714, cols.254-258, and Appendix 1(4).

concurrence of a second medical practitioner and was not to be performed after the thirteenth week of pregnancy. The burden of proof in any prosecution that the operation was not performed in good faith was to rest with the Crown. Short's expressed aim was to clarify the law for the medical profession and thereby also to improve the position of women. The deviant was again presented as being the married woman with several children. At the end of her speech the question was put and agreed to in an unopposed first reading.

The second reading on 2 July did not however meet with the same success. As is normal with this type of Bill there was no time for a full debate; it could advance only with a formal second reading, i.e. with no one objecting. The opponents of reform defeated the Bill when William Wells, a Roman Catholic M.P., used the established rules of parliamentary procedure to his advantage by calling 'object' and thus the Bill was lost.

(ii) Lord Silkin's first Bill 1965⁷²

The Abortion Bill introduced in the House of Lords by Lord Silkin in November 1965 followed the line of attack conceived by ALRA on the failure of limited proposals. It presented the extreme case of middle-range proposals, giving no rights to women but including social factors as grounds for

72. See Hansard H.L. Nov. 11th 1965, vol.270, col.113; Nov. 30th 1965 col.270, cols.1139-1242; Feb. 1st 1966 col. 272, cols.284-356; Feb. 3rd 1966 col.272, cols.491-557; Feb. 7th 1966 col.272, cols.581-634; Feb. 22nd 1966 col.273, cols.92-151; Feb. 28th 1966 col.273, cols.520-576; Mar. 7th 1966 col.273, cols.910-920; Hinde, K. and Simms, M.: Abortion Law Reformed, op.cit., pp.132-154; and Appendix 1(5).

termination. It sought to legalise therapeutic abortion on four grounds:

- a. in the belief that if the pregnancy were allowed to continue there would be grave risk of the patient's death or of serious injury to her physical or mental health resulting either from giving birth to the child or from the strain of caring for it.
- b. in the belief that if the pregnancy were allowed to continue there would be grave risk of the child being born grossly deformed or with other serious physical or mental abnormality.
- c. in the belief that the health of the patient or the social conditions in which she is living (including the social conditions of her existing children) make her unsuitable to assume the legal and moral responsibility for caring for a child or another child as the case may be.
- d. in the belief that the patient became pregnant as the result of intercourse which was an offence under sections one to eleven inclusive of the Sexual Offences Act 1956 or that the patient is a person of unsound mind.

The Bill also sought to limit terminations to the first sixteen weeks of pregnancy where termination was performed on grounds (c) or (d) and placed the burden of proof on the Crown in criminal proceedings.

This Bill was drafted by Glanville Williams after discussions

with Vera Houghton and Lord Silkin. As such it came much closer to representing ALRA's real aims than other Bills had done by its inclusion of clause 1(c) which was entirely new to legislative attempts at reform. It was not even a publicly stated ALRA aim and little public support for it could be demonstrated, especially on the part of the other main pressure groups. But the proposed Bill also contained another important innovation in its apparently innocent inclusion in clause 1(a) of the words 'from the strain of caring for it'. This was a radical departure from previous presentations of this clause (designed to cover case law provisions for therapeutic termination of pregnancies) in its extension of the normal interpretation of the law. Throughout the presentation of Silkin's Bill, the stereotype of the woman who would benefit under its provisions was presented as the working class married mother of several children who lived in poor surroundings or who was married to a lifelong criminal, drug addict or alcoholic. That this evoked a non-hostile response is evident from the fact that only a few peers opposed the Bill as a matter of principle, whereas other opponents of reform limited their criticisms to its specific wording and provisions. The argument became one of interpretation as to how best to improve and protect the position of the woman without threatening medical freedom or totally disregarding the rights of the foetus.

This tactical argument was persuasive to Lord Silkin who, at the end of the second reading of his Bill, gave the assurance

that all criticisms would be given serious consideration and that he was willing to collaborate with his main opponents, Lords Dilhorne and Brain and the Bishop of Exeter, in producing a more acceptable measure, either by withdrawing it totally and substituting a new one, or by substantially amending it. During the second reading, he conceded the need for two medical opinions for all abortions except emergency cases; the need for clarification of his social clause by a re-phrasing which would avoid objections relating to judgements being made on the suitability of some women as mothers; and also for a re-appraisal to be made of the difficulties of proof regarding sexual offences. His reassurances led to an overwhelming favourable vote of 67 to 8 at the second reading.

Silkin's reassurances marked the start of a two year period of compromise. ALRA had already lost ground by his agreeing to the necessity for a second medical opinion but, if pushed to compromise, was willing to agree to a second opinion in all decisions except those made on the grounds expressed in clause 1(a). Between second reading and the Bill's committee stages, Silkin consulted many groups including ALRA, the BMA and his principal opponents in the Lords. The Church Assembly Board also presented its report.

As a result of these meetings, Silkin substantially amended his Bill to include the necessity for two medical opinions except in emergencies; and for notification to take place within seven

days to the Chief Medical Officer of the Ministry of Health. In doing so, Silkin was following the recommendations of the BMA and the Church Assembly Board but had avoided both bodies' suggestion (as opposed to decided requirement) that the second opinion should be from a practitioner of consultant status.

The substance of the grounds for abortion did remain virtually the same, albeit with three changes. To clause 1(a) was added risk to the woman's physical or mental well-being in order to encompass a wide concept of health which had been suggested in the report of the Church Assembly Board. Clause 1(c) was tightened to remove any explicit reference to social conditions or other existing children so that inadequacy related only to the woman's physical or mental capacities. The loss of express social conditions as grounds for abortion was also ALRA's loss but the addition of a sub-clause to clause 1 tempered this apparent defeat, whilst being ostensibly a victory for the views of the BMA and the Church of England, by including the recommendation of the Church Assembly Board's report, as endorsed in the report of the BMA that:

In determining the patient's health or physical or mental well-being account may be taken of the patient's total environment whether actual or reasonably foreseeable.

Thirdly, criticisms of the difficulty of proving rape had led ALRA to suggest a safeguard that any termination on the grounds of rape would require a certificate that there was evidence of such

an assault from a registered medical practitioner who was consulted as soon as practicable after the assault. These discussions and compromises did not lead to an easy committee stage for the Bill. 'Well-being' did not survive in clause 1(a) as it was considered too ill-defined. Instead the woman's health was to be considered 'whether before, at or after the birth of the child'. This constituted an extension of case law. 'Total environment' was changed to 'circumstances, whether past, present or prospective' although the effect of such considerations, it may be argued, was the same. After a heated discussion, clause 1(c) (the inadequacy of the mother clause) was passed but the sexual offences clause provided the most bitter debate, especially with reference to a girl under sixteen and to rape. In the event, rape was lost as being too difficult to prove; as leading in all probability to false allegations of rape; and as being covered, in genuine cases, by clause 1(a) in relation to mental health. The 'under-sixteen' provision however did survive the committee stages. The provisions relating to notification and to two medical opinions were widely approved. Clause 1(b) now required the degree of deformity to be so high as to deprive the child, if born, of any prospect of reasonable enjoyment of life.

Before the report stage, Silkin tabled further amendments and, as a result, was persuaded to allow the Bill to be re-committed to the Committee of the Whole House for full discussion. At the first report stage clause 1(c) was lost by

81 to 51 when the opponents of this provision marshalled their forces well and argued that the medical profession was not qualified to make judgements on the adequacy or otherwise of women as mothers nor, in a democracy, was society entitled to do so. This was possible at the first report stage because the tabled amendments related to technical points by which the principle involved in clause 1(c) was unaffected.

The Committee of the Whole House supported Silkin's amendments, thus further reducing the influence of ALRA on the specific form of legislation and enhancing that of the medical profession and the Church of England. Silkin's Bill now required that the medical practitioner performing the abortion had to be a registrar (or someone of similar or superior status) employed by the NHS and holding an appointment in gynaecology and that the operation could only be performed in an NHS hospital or 'in a place for the time being approved for the purposes by the Minister of Health as the Secretary of State'. The requirements relating to status were to become an ever present feature of the legislative history of the Abortion Act 1967 and have continued to dominate attempts to amend that Act. Lord Silkin thus became the first person to successfully take an Abortion Bill through one of the Houses of Parliament. However, the Bill was lost with the dissolution of Parliament.

(iii) Simon Wingfield-Digby's Bill 1966⁷³

Whilst Silkin's first Bill progressed in the House of Lords another attempt to reform the law on abortion was made in the House

73. See Hansard H.C. 25th February 1966, vol. 725 cols. 837-854, and Appendix 1(7).

of Commons, this time by Simon Wingfield-Digby, a Conservative M.P. He had drawn eighth place in the private members' ballot which gave him little chance of success, but he was persuaded to take up the cause of abortion law reform. Partly because of his low place, the Bill he introduced was much more modest than its immediate predecessors. ALRA's aims were not **totally** covered by the Bill for it was drafted by Wingfield-Digby himself with the help of a barrister friend who was also partly responsible for the publication, Abortion - a Conservative Viewpoint,⁷⁴ which advocated only strictly limited reform.

Wingfield-Digby decided to introduce only modest proposals in the hope of altering the Bill in committee to allow for social factors to be considered in the decision making process. He sought to give statutory effect to the Bourne judgment, that is to cover cases where there was a serious risk to life or grave injury to physical or mental health and also to extend case law by covering cases where 'it was more probable than not that the child, if born, would suffer from such physical or mental abnormalities or both as to deprive it of any prospect of reasonable enjoyment of life'. As such, it fell far short of ALRA's aims but was in accordance with the views expressed by the BMA (at this point neither the RCOG nor the RMPA had reported). Although much more limited than the proposals of many women's organisations, it was more advanced than the stance taken by the Church Assembly Board in its explicit inclusion of deformity

74. Conservative Party Political Centre Bulletin: Abortion - A Conservative Viewpoint, 1965.

as a ground for therapeutic abortion; the church had desired only implicit recognition of this factor. In another sense, the Church Assembly Board's report was more advanced than Wingfield-Digby's Bill in recommending that the concept of health to be employed ought to be wide and include reference to the woman's well-being and that her total environment, whether actual or reasonably foreseeable, should be taken into account. Again, the ostensible reason for reform was to free the medical profession: Wingfield-Digby deliberately avoided both a social and a sexual offences clause because of the difficulties of assessment and/or proof and also because such considerations might be seen to require skills outside the realm of the medical profession's technical competence. The opinion of the BMA and the Church Assembly Board prevailed in the provisions for notification and for a second opinion, both of which ALRA had hoped to avoid as being more restrictive than case law. It was prepared to concede the latter, however, if it became unavoidable.

The modest nature of Wingfield-Digby's proposals did not win him the support he anticipated. Like its predecessors, his Bill was talked out at second reading after one hour's debate, this time by a Roman Catholic M.P., Peter Mahon. The exercise was useful to ALRA in that for the first time a Conservative M.P. had presented a reforming Bill which stimulated interest in the issue in the Conservative ranks and made it much more a non-party issue. More importantly, it confirmed that modest proposals did

not necessarily aid the cause of reform; a future tactic would be to aim for the most extreme of middle range proposals with a view to making concessions in committee.

(iv) Lord Silkin's second bill 1966⁷⁵

In the next session of Parliament Silkin introduced his second Abortion Bill in the House of Lords. It was exactly similar to the one which had been passed earlier and as such it was given an unopposed second reading. In its committee stages, however, Silkin introduced two principal amendments. The first was an attempt to reintroduce the 'social' or what came to be known as the 'inadequacy' clause. In doing so, he was responding to increased pressure from ALRA which had thought that the final form of his first Bill constituted a less than adequate extension of the law. The form of the amendment was largely influenced by the arguments against the 'inadequacy' clause, viz. that it implicitly made moral judgements on the adequacy of women as mothers. The new amendment simply said that therapeutic abortion ought to be available in cases where the woman's capacity would 'be severely overstrained'. The picture presented was that of a helping hand to the woman rather than of a moral judgement upon her and as such found favour in the Lords and was passed by a large majority. This success for ALRA was tempered by defeat in the second amendment, for Silkin

75. See Hansard H.L. 10th May 1966, v ol.274, c ols.577-605; 23rd May 1966, v ol.274, c ols.1208-1250; Hindell, K. and Simms, M.: Abortion Law Reformed, op.cit., pp.132-154; and Appendix 1(6).

gave way to pressure from the RCOG and stipulated that abortions could only be carried out by or under the supervision of a consultant gynaecologist.

Silkin's second Abortion Bill was never to complete its parliamentary life, for, in May 1966, David Steel agreed to sponsor a Bill in the House of Commons and Lord Silkin withdrew so that the Commons could debate the issue.

(v) David Steel's Bill 1966⁷⁶

David Steel, a young Scottish Liberal M.P., had drawn third place in the private members' ballot thus allowing reform to be debated more fully than ever before in the Commons. The immediate problem facing Steel and ALRA concerned the nature of the Bill. Silkin urged that he should introduce a Bill on exactly similar lines to that which had gone through the Lords but ALRA was reluctant to support a Bill which omitted many of its desired aims and which it considered something less than a reforming measure. It also feared that the increasing interest taken in the subject by other bodies opposed to liberal reform, especially the medical profession, would lead to further restrictive amendment. Consequently, it advised that on tactical considerations a more extreme measure than Silkin's Bill should be introduced since some provisions could then be discarded in

76. See Hansard H.C. 15th June 1966 vol.729 col.1459; 22nd July 1966, vol.732 cols.1067-1166; 2nd June 1967 vol.747 cols.448-536; 29th June 1967 vol.749 cols.895-1102; 13th July 1967 vol.750 cols.1159-1386; 25th Oct. 1967 vol.751 cols.1737-1782; Reports of Standing Committee F 1966-67 vol.X cols.3-616; Jan. 18th, 25th; Feb. 1st, 8th, 15th, 22nd; Mar. 1st, 8th, 15th, 16th, 22nd; April 5th; H.L. Debates 19th July 1967 vol.285 cols.258-355; 26th July 1967 vol.285 cols.939-106; 27th July 1967 vol.285 cols.1394-1509; Hindell, K. and Simms, M.: op.cit., pp.155-213; and Appendix 1(8).

attempts to compromise conflicting opinions. This, it was hoped, would have the added benefit of allowing ALRA to appear as a reasonable body.

To this end, ALRA advised Steel that only one medical opinion was necessary; that there ought to be no stipulation of the status of that practitioner; that an extended concept of well-being and thus of health should be introduced into clause 1(a); that notification should be dropped totally; and that rape should be reintroduced as a separate ground for abortion, subject to the safeguards proposed by Lord Silkin in his Bill. ALRA was willing to compromise on the rape clause but only if clause 1(c) were accepted.⁷⁷

ALRA was not, however, the only adviser to Steel at this time. His drafting committee included his twelve M.P. sponsors one of whom, Dr. Michael Winstanley, was a general practitioner and a BMA official (as well as a fellow Liberal M.P.). The Home Office, which had urged Steel to take up either abortion law reform or homosexual law reform, was also acting in an advisory capacity by commenting on his draft Bills. It objected to the inclusion of the term 'well-being' on the grounds that it was too vague and would open the door to abortion on demand; nor did it change its position regarding the rape clause to which it had all along been totally opposed. It did, however, favour consideration of the woman's total environment in assessing risk to her health. Other suggestions included the necessity for a second opinion;

77. ALRA Private Papers (uncatalogued).

that the operation be performed only by a consultant gynaecologist employed by a Hospital Board; that the operation be performed only in an NHS hospital or in 'a place for the time being approved for the purpose'; and that a system of notification be devised. Later, it was to advise on the inclusion of a conscience clause and the exclusion of any reference to the child which would be understood as implying that it would be better for it to be aborted than born except in cases where it would suffer a degree of deformity as to deprive it of reasonable enjoyment of life.⁷⁸

The Bill which Steel presented in the Commons on 15 June 1966 represented a mixture of the advice given to him. The actual grounds he proposed for therapeutic abortion largely followed ALRA's views. They were:-

- a. That the continuance of the pregnancy would involve serious risk to the life of or grave injury to the health, whether physical or mental, of the pregnant woman whether before, at, or after the birth of the child; or
- b. that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or
- c. that the pregnant woman's capacity as a mother will be seriously overstrained by the care of a child or of another child as the case may be; or

78. David Steel's private papers contained in ALRA's private papers (uncatalogued).

- d. that the pregnant woman is a defective or became pregnant while under the age of sixteen or as a result of rape.

The Bill contained a safeguard to the rape clause in that any termination performed on this ground required a certificate, obtained from a registered medical practitioner consulted freshly after the alleged assault, to the effect that there was evidence of a sexual assault. The Bill did not, however, include any reference to well-being in clause 1(a) and so Steel followed the advice of the Home Office on this point but disregarded the suggestion that a sub-clause be added to allow for the woman's total environment to be included as a factor in the decision making. Abortions performed on girls under the age of sixteen were to require the written consent of the girl and any necessary consent of her parent or guardian.

It is in the Bill's safeguarding provisions that Steel largely ignored ALRA's advice and followed the suggestions of the medical profession, the Church Assembly Board, and the Home Office. He included the necessity for two medical opinions except in the case of emergencies, and also for notification. He did not go as far however as the RCOG would have wished by stipulating that the second opinion be that of a consultant gynaecologist nor did he specify that the practitioner performing the operation should be a consultant gynaecologist. He did, however, accept that operations should be performed only

in NHS hospitals or specially approved places. At this point no mention was made of a conscience clause and as there was no specific objections to such provision it is difficult to understand why. One possible explanation, given that Steel himself later offered to amend in committee to this effect, lies in a tactical consideration that the postponing of its inclusion would have the anticipated consequence of making him appear reasonable and amenable to compromise.

Steel's Bill obtained a large majority at second reading, 223 votes to 29. It is surprising that no attempt was made by its opponents to talk it out, a tactic which had succeeded on every other occasion in the Commons. Only guesses can be hazarded as to why this was so. Of thirty two Catholic M.P.s only fourteen voted that day but numbers do not affect 'talking out' so that is not a sufficient explanation in itself. Perhaps it had become obvious that the pro-reformers were not about to give up and that some measure of reform was almost inevitable, so that it was better to try to get as moderate a law as possible. This view is probably strengthened by the fact that Roy Jenkins had become Home Secretary and chose to speak in the debate in his personal capacity. He was very much more in favour of reform than previous Home Secretaries and was also, in his ministerial capacity, willing to offer drafting assistance to Steel. They perhaps also believed that an attempt to talk the Bill out would be futile since the Speaker could honestly declare that there had been sufficient time for full debate.

The debate itself followed what had become a predictable pattern. The pro-reformers argued for an extended definition of health, the anti-reformers for a narrow definition; the pro-reformers for the quality of life and the anti-reformers for the sanctity of life; the pro-reformers for an interlinked set of factors and the anti-reformers for the isolation of the rights of the foetus; the pro-reformers for the hard pressed mother who unselfishly was forced to have an abortion because of her social conditions and the anti-reformers against the frivolous, irresponsible, immoral young girl or the selfish 'unnatural' jet setter or career woman. Between the two extreme stereotypes of the deviant presented there was one voice, that of Edward Lyons, willing to state that his wife had required an abortion.⁷⁹ The importance of this lies in its being an admission that middle class married women did seek abortions, that 'anyone's wife or daughter' might require one.

In the six months between the second reading and the committee stages, Steel was subjected to great pressure from all the pressure groups concerned. He had numerous consultations with the BMA and the RCOG but not with the RMPA. Both bodies also negotiated with the Home Office and the Ministry of Health, and again the RMPA did not. The BMA and RCOG issued their joint report in which the BMA gave way considerably to the more conservative RCOG. The Joint Committee of the Law Society and the British Academy of Forensic Sciences also issued their report which advocated more

79. Hansard H.C. 22nd July 1966, Vol.732, Cols.1088-90.

moderate reform than that contained in Steel's Bill.

At the same time as resolutions in favour of reform were being sent to individual M.P.s and to ministries, SPUC was organising its activities for the committee stages of the Bill. Steel himself was bombarded on all sides by conflicting advice and viewpoints but, as a private member, he felt the Bill was still essentially his whatever his supporters tried to do. That Steel was no puppet of ALRA's had been demonstrated in the form in which he presented his Bill, but this was to become more evident both before and during the committee stages of the Bill. Later Steel was to recall that of all the pressure groups he negotiated with during the history of his Bill, the medical profession was the least willing to compromise on its views: 'at times the medical hierarchy came near to demanding that Parliament accept their word as final'.⁸⁰

In the event, the Bill changed radically in committee. Steel himself, against ALRA's advice and very much to their annoyance, tabled an amendment to extend clause 1(a) to include reference to the woman's well-being and to allow for her total environment to be taken into account. Although this amendment owed its form to the Church Assembly Board's report, it owed its existence to the pressures of the BMA. Steel was convinced that the support of the BMA was crucial to both the passing of the Bill and to its implementation. Ironically, it

80. Hindell, K. and Simms, M.: op.cit. Foreword by David Steel.

was one of ALRA's chief medical advisors and one of the keenest advocates of reform, Sir Dugald Baird, who convinced Steel that it was both impossible and, from the standpoint of doctors, wrong to separate social and medical indications for termination of pregnancy and instead that an extended definition of health contained in clause 1(a) was preferable to a separate social clause 1(c). ALRA itself had previously recommended the inclusion of the proposed amendment's provisions, but as an addition to clause 1(c) and (d) not as a replacement, and now Steel, although hoping to have a full discussion in committee of clause 1(c) and (d) in addition to his amended clause 1(a), expressed his willingness to drop the more controversial clauses if his amendment was accepted.

Consequently, clause 1(c) and (d) were dropped without a division. After seven and a half hours devoted to discussion of the amended clause 1(a) Steel's amendment and a rider of Lyons was accepted by 18 votes to 9 so that the new clause 1(a) read:-

- (i) That the continuance of the pregnancy would involve risk to the life of or injury to the physical or mental health of the pregnant woman or the future well-being of herself and/or the child or her other children.
 - (ii) in determining whether or not there is such a risk of injury to health or well-being account may be taken of the patient's total environment actual or reasonably foreseeable.
-

ALRA regarded this as a bitter defeat. That the safeguarding criteria of 'grave' and 'serious' risk had been lost did little to assuage their anger at Steel's actions; indeed such criteria had been dropped on the advice of the BMA who regarded them as too ill-defined. This increased ALRA's resolve that no other restrictive amendment could be allowed by way of compromise. They were willing however to allow a conscience clause in the Bill which laid the burden of proof in any court action upon the defendant.

The other main issue of the committee stage concerned the necessity of stipulating the status of the practitioner giving the second opinion and/or the practitioner performing the operation. Proponents of liberal reform saw these amendments as highly restrictive and designed to weaken the effects of any legislation passed since the suggestion was that only consultant gynaecologists ought to perform the abortion and provide the second opinion. Their objections to this lay in the limited number and uneven distribution of consultant gynaecologists in the country, and the very conservative attitude adopted by the RCOG and many individual gynaecologists towards abortion. Their objections were strengthened in that there was no precedent for stipulating that only certain doctors could perform certain operations. The amendment was seen as a wrecking one which, if passed, would severely restrict the numbers of abortions performed; would lead to intolerable pressure on hospital facilities; and possibly to delays in performing operations with increased physical and psychological risks.

Moreover it was argued that abortion techniques were constantly being advanced and simplified so that they did not require the considerable skills of consultant gynaecologists. Certainly the anticipated development of an abortifacient pill would render such skills superfluous. The advocates of this clause viewed abortion differently, seeing it as a potentially risky operation requiring highly developed surgical skills and one that was open to abuse for profit by doctors. It was suggested that consultant gynaecologists were less likely to be so motivated.

Four and a half hours were spent discussing whether the second opinion should be that of a consultant gynaecologist. In the event the pro-reformers successfully argued that the grounds for abortion often involved assessment of factors other than gynaecological. Five hours were spent discussing the amendment that the operation should be carried out only by a gynaecologist, accepted medical practice although not a legal requirement. Again this was narrowly defeated.

Two other main issues were settled during the committee stage. It was agreed that there ought to be a system of notification to the Chief Medical Officer in the Ministry of Health and that such notification should be confidential. Secondly, it was agreed that abortions could only be carried out in NHS hospitals or in places approved for that purpose by the Ministry of Health and subject to periodic review.

The committee stages show the BMA as having effected the loss of clause 1(c) and (d) which ALRA had regarded, 1(c) especially, as crucial to a liberal reform and the substitution of a vague clause 1(a) which could then be differentially interpreted by individual doctors. That a sub-clause was added allowing for 'total environment considerations' to be taken into account was not necessarily a victory for ALRA; the BMA had itself made such a recommendation following the Church Assembly Board's report. However, ALRA successfully resisted the views of both the RCOG and the BMA on the status of the doctors concerned. The RMPA's views did not carry much weight: 'social' grounds were lost although an extended definition of health accepted. ALRA also failed to halt the notification clause. The Church Assembly Board's recommendations had been followed in clause 1(a) but not by the specific inclusion of clause 1(b) nor its recommendations regarding consultants. SPUC had failed on both its aims viz. to halt the legislation outright or to limit the provisions of the Bill solely to those existing in case law.

Despite the radical changes in committee and by Steel to pacify the profession the medical hierarchy was still unsatisfied with the Bill. The BMA continued in its representations to Steel, the Home Office and the Ministry of Health. In particular, it objected to the inclusion of 'well-being' in clause 1(a) which had been recommended by the Church Assembly Board, the Joint Committee of the Law Society and the

British Academy of Forensic Sciences as well as by the BMA itself in its early interim report. It also wanted a safeguarding consultant clause in the Bill.

Opponents of Steel's Bill on the committee had been so successful in prolonging the committee stages that the Bill had only one Friday in which to complete its report stage and third reading. If the Bill could not be completed on one day then it would drop automatically to the bottom of the list of private members' Bills which had been through committee and there would be little likelihood that it could be reconsidered before the summer recess. As such, it was obvious that Steel and his reformers needed to persuade the Government to grant extra time. The Home Office had objected to the inclusion of 'well-being' but had been ignored; Steel now decided to compromise on this if it would ensure the necessary support to get a majority vote. In this he was supported by ALRA but only to the extent that 'total environment' or some similar provision stayed. Neither Steel nor ALRA was prepared to compromise on the inclusion of a consultant clause and they were not asked to do so for the Minister of Health, Kenneth Robinson, stated that he would not wish to make such invidious distinctions between doctors.

The substituted amendment was tabled but brought no immediate promise of support in the form of extra time. Indeed it gave his opponents an excellent opportunity to keep the debate

going and they tabled a large number of amendments themselves. On the first day of the report stage the debate was easily continued past 4 p.m. However, by then, Richard Crossman announced that the Cabinet was prepared to set aside twelve night hours for further consideration of the Bill. Opponents still tried to talk the Bill past the twelve hours; further time was granted to allow a vote, in which the opponents were defeated. The Bill as it emerged from the report stage was further amended to suit the wishes of the medical profession and the Home Office in that reference to 'well-being of herself and/or the child or her other children' was dropped in favour of 'health of the pregnant woman or any existing children of her family'. The 'consultant clause' amendment was again successfully resisted.

For the first time, a Bill to reform the law regarding abortion had passed in the House of Commons but it had still to pass the Lords. Hopes, based on the Lords' attitude to Silkin's Bills, that Steel's Bill would have an easy passage were unfounded. The reformers had some success when the conscience clause was altered to provide for emergencies which had been recommended by the Home Office which also wished the Act to be deferred for six months to allow regulations to be drawn up. The chief issues were the 'consultant clause' and clause 11(a). A move to strike out 'the health of any existing children in her family' which had been suggested to Steel by the Home Office after he had agreed to leave out 'well-being' met with success which further

restricted the ambit of the Bill. But what was regarded as the most serious change was the success of Lord Dilhorne's amendment requiring that one of the two doctors required to certify that an abortion was necessary should be an NHS consultant or should be approved for this purpose by the Minister of Health.

The effect of this was a creation of a 'crisis' situation by the mass media.⁸¹ One of the reformers, Charles Pannel, had suggested that if the Lords insisted on its two amendments then the reformers ought to invoke the Parliament Act. This was seized upon by the press and described as a constitutional crisis. Ian Trethowan wrote in The Times:

Just before Parliament packed up for the recess last week, the House of Lords made two important amendments to the Bill ... These will go back to the Commons as soon as Parliament reassembles in late October ... If they are rejected, the peers will have to decide whether to stick to their guns. If they do then the sponsors of the Bill in the Commons threaten to use the Parliament Act to push it through in its original state. ⁸² The argument might then become "peers against people".

This seems most unlikely for although there is no specific limitation in the Act against private members it had only been invoked previously by governments, and then only rarely, for the Lords invariably adhere to the convention that they give way to the Commons. Even given that it was possible, it is also doubtful whether as a tactic it would have proved effective. A Bill defeated in the Lords only automatically becomes law after twelve

81. See e.g. *The Times* 3 August 1967 and 5 August 1967 and account by Richards, P.G.: *Parliament and Conscience*, Faber and Faber, London, 1970, p.101.

82. See article by Ian Trethowan: *The Times*, 3 August 1967.

months if it is approved in its original form by the Commons in the next parliamentary session; the twelve month delay would have allowed the supporters of these amendments time to rally their forces in as effective a manner as the pro-reformers had so successfully done and, given the narrow split over the 'consultant clause' in particular, it is just possible that they would have succeeded. Whether concern over the constitutionality of their actions did cause them to change their mind or whether it was the fear of the Government pressing for sweeping reform of the Lords is impossible to ascertain but when the Bill came to its report stage on October 23 the amendments were reversed.

One other important change was made that day. It was suggested by the Lord Chief Justice that some indication of the degree of risk to life or health ought to be given. 'Serious' and 'grave' had already been dropped as being too difficult to ascertain and too readily open to subjective interpretation. It was now proposed that a suitable criterion was 'that the risk to life or health is greater by continuing the pregnancy than by terminating it'. This was readily accepted but no one seemed to realise that, statistically, childbirth carried more hazards than legal abortion when carried out in sanitary conditions by qualified medical practitioners. Moreover neither was it realised that with medical advances and simpler abortion techniques this would almost certainly become so in every case and that this would lead to an unanticipated consequence viz. that it would be extremely

difficult to prove in legal proceedings that abortion on health grounds was not preferable to the continuation of the pregnancy in terms of risk to life or health - the criteria on which the judgement had to be made. The Abortion Act received the Royal Assent on October 27 1967, thirty-one years after the first concerted effort to reform the law.

7. Victory or defeat: whose views prevailed?

None of the interested pressure groups can be said to have achieved a total success in 1967 and only one, SPUC, may be regarded as having suffered a defeat. In assessing these successes and failures one must consider the passing of an Abortion Act at all to be ALRA's victory. Its campaign started when the subject was 'taboo' and the media refused to discuss the issue. Throughout three decades its activities gradually made the object of reform seem respectable and desirable. It helped create a climate of opinion favouring some measure of reform although not necessarily the reform it itself desired. As a pressure group it was tactically effective, recognising the need for a planned campaign, for building up support in the country, on the backbenches and especially in the Cabinet. It exploited every opportunity which presented itself and created its own. It constantly kept the subject alive in Parliament through parliamentary motions, questions, private members Bills, and effective lobbying of M.P.s. In particular, it codly appraised the activities of the other groups involved, recognised their interests and sought to counter them.

By contrast, SPUC appeared to have little conception of political reality. As a pressure group it failed to realise the effects of other groups' activities. Although it emerged late on the political scene, it ignored the effect of this on its own activities for, during the committee stages of Steel's Bill when ALRA was constantly briefing members on the instrumental effects of proposed clauses and amendments, SPUC's main energies were concentrated on raising a petition designed to persuade the Government to set up a pre-legislation Royal Commission - a well known stalling device.

It is true that SPUC failed to halt the progress of the Bill or to restrict its contents to severely limited considerations. However, Richards⁸³ has analysed voting patterns at second and third reading and has shown that the objectors to the Bill were able to attract proportionally more support than did the Bill's sponsors.

Despite ALRA's sophistication as a pressure group and the fact that a large part of the credit for the existence of an Abortion Act rests with it, it did not achieve many of its specific aims. It failed to secure a separate social clause, specific provision for girls under sixteen, or for rape victims; its views on notification and the need for a second opinion were over-ruled. By contrast the BMA and the RCOG did succeed in preventing separate social grounds for abortion or abortion as an

83. Richards, P.G.: Parliament and Conscience op.cit., pp.109-111.

automatic right for girls under sixteen and rape victims. They secured the need for a second opinion but failed to get a 'consultant' or 'consultant gynaecologists' clause. They had advocated notification and a conscience clause and both measures were approved. Both the Church Assembly Board and the Joint Committee of the Law Society and the British Academy of Forensic Sciences had advocated a 'total environment' or 'total circumstances' clause and this was accepted. The RMPA too had been partially successful in that the Act allowed a wide concept of health to be employed in decision making, but had failed in that social conditions were not specifically recognised nor 'well being' accepted.

The outcome of the struggle for abortion legislation clearly vindicates Lemert's thesis that laws rarely represent the interests or values of one group but are instead a 'patch-work monster'.⁸⁴ That legislation was passed or rather that there was a perceived need for legislation of some form can be seen as a victory for the values propounded by ALRA, but the form of the legislation shows the influence of other groups, especially of the medical profession and, in particular, of the BMA. The powerful position of the BMA as a pressure group has been discussed earlier and this does help explain its relatively high success in promoting its interests at the legislative stages. By comparison the RMPA was a far less established organisation, lacking the contacts of the BMA and its success was correspondingly

84. Lemert, Edwin: op.cit., p.57.

less. The power and influence of the various groups can then be seen to have altered at different stages in the legislative process - a fact to which Aubert has drawn our attention.⁸⁵

But pressure group activity as an explanation of abortion law reform is inadequate, for determining factors in whether attempts at legislation succeeded or failed were the rules of parliamentary procedure and their recognition and skilful handling by individuals. Pressure groups influence but they do not necessarily determine. Successive governments refused to adopt abortion law reform as an issue and indeed, until Roy Jenkins, successive Home Secretaries denied the need for reform. Until David Steel secured a high position in the private members' ballot, opponents of reform successfully used parliamentary procedure to their advantage. Steel's Bill, given the natural course of events, would have suffered the same fate but for the Government's decision to manipulate the procedures to the advantages of the reformers.

The present unavailability of public records means that one can only guess why this was done. Was it the cost to the NHS of cases resulting from illegal abortions, the number of working days lost due to abortion, the fears of over population and a reduced standard of living? The ostensible reasons include a decision not to waste future parliamentary time by debating the same old issue and that demands for reform had reached such an intensity that 'something had to be done once and for all'.

85. Aubert, W.H.: op.cit.

Furthermore, the reformers had supporters in key influential positions in Parliament and the success of the Abortion Bill was due in great measure to the benevolence of Ministers; Roy Jenkins was Home Secretary; Douglas Houghton, Chairman of the Parliamentary Labour Party; Kenneth Robinson, Minister of Health; John Silkin, Chief Whip; Richard Crossman, the Leader of the House. Only two members of the Cabinet, Lord Longford, Leader of the House of Lords, and Anthony Greenwood, Minister of Housing, were opposed to the Bill in principle and only two to the particular contents of this Bill, Ray Gunter, Minister of Labour and William Ross, Secretary of State for Scotland. Moreover, the Government had been elected with a large majority, it was early in its term of office and it is arguable that tacit support of the Bill would not be an electoral liability. The assistance of the Cabinet was vital to the Bill's outcome. When the standing committee dealing with private members' Bills was slowed down by another Bill, the Employment Agencies Bill, arrangements were made to move the Abortion Bill to another committee. Again, when it appeared that a filibuster was developing at the report stage, extra time was granted.

Also, the Bill did not seek to reverse an established principle of social policy despite what its most ardent opponents maintained. Abortion was a practice of limited acceptance, legitimised by case law. Few rejected the need for it when medical reasons were compelling. No one disputed the prevalence (although disagreements did exist on the extent) of backstreet abortions and few disputed the desirability of reducing them. The issues tended not to be of principle but of detail, of

how far an existing practice should be permitted and what safeguards were needed to prevent abuses.

8. Legal changes effected by the 1967 Act

It has become popular with opponents of abortion law reform to describe the Abortion Act as introducing radical changes into British law. It is questionable whether this was so.

The 1967 Act did not repeal the Offences Against the Person Act 1861⁸⁶ or the Infant Life Preservation Act 1929⁸⁷ which therefore still apply in England and Wales. Instead the Abortion Act specifies only when an offence does not occur under sections 58 or 59 of the former Act viz. that a person is not guilty of an offence under those sections if (a) two registered medical practitioners are bona fide of the opinion that an abortion is necessary on the grounds specified in sections 1(1)(a) and (b) with regard to the indications contained in section 1(2) in reaching that judgement; (b) the abortion is carried out by a registered medical practitioner whether or not he is one of the two mentioned in (a); and (c) subject to certain limitations, the termination of the pregnancy takes place in a hospital vested in the Minister of Health or in a place currently approved by him. Section 5(2) of the 1967 Act explicitly states that anything done with intent to procure an abortion is unlawfully done unless

86. 24 and 25 Vict. ch.100.

87. 19 and 20 Geo. V ch.34.

authorised by section 1 of the Act and the offender is liable to prosecution under the pre-1967 law.

The obvious intention of the 1967 Act is to protect not only the doctor but any person who takes part in an abortion, such as theatre or nursing staff and any person who procures or supplies instruments or other abortifacients knowing that they are to be used with 'intent to procure the miscarriage of any woman'. As Hoggett notes⁸⁸ this latter protection seems unnecessary as it is only a crime under section 59 of the 1861 Act to supply 'unlawfully' and it can scarcely be unlawful to supply abortifacients for a legal abortion. The effect of sub-section 2 of section 5 of the 1967 Act was to remove the common law protection afforded to doctors doing an abortion to save the life of the mother. Accordingly it was necessary to make specific provision for emergencies and this was done in section 1(4). Hoggett questions whether this section is sufficiently wide to cover all cases where it may be desirable to induce an abortion quickly.⁸⁹ He quotes the example of a woman operated on for the removal of fibroids from the uterus so that she may have further children. If, during the operation, it is found that she is pregnant, then in order to complete the operation, it would be necessary to abort. This would be an offence as it would fall outside the scope of section 1(4) and

88. Hoggett, A.J.C.: The Abortion Act 1967, (1968) Criminal Law Review, pp.247-258 at 254 fn.27.

89. Ibid. at 254.

there would be no second opinion to permit it being carried out on any other ground. Furthermore the operation would also have to be stopped if it was being performed in other than an NHS hospital or on premises approved by the Minister of Health.

The 1967 Act followed case law in the provision doctors must be 'of the opinion formed in good faith' that the requirements of section 1(1) are satisfied. The opinion need not be reasonable; no objective criteria were established; the sole test is that of good faith. The common law was actually less restrictive than statute law in that it did not lay down a positive legal requirement that there had to be two medical opinions although the absence of a concurring opinion, in the event of criminal proceedings, may have called that good faith into question. Moreover, under statute law, if one medical practitioner gives an opinion mala fide and another performs the operation in good faith and with no reason to doubt the genuineness of the first opinion, then it would seem that the second practitioner would be guilty of an offence under section 58 of the 1861 Act.

Statute law further follows case law in that it is not the patient's situation ^{or} circumstances which are important in themselves but their effect on the life or health of the mother or of her existing children. It is debatable whether such considerations extended normal medical practice as opposed to case law for many doctors, albeit those in favour of reform,

argue that they always considered a patient's total circumstances, including living conditions, when assessing health. However, the grounds for legal abortion were probably extended by the inclusion of the deformity clause and reference to the health of existing children, and by the absence of reference to 'grave' and 'serious' risks to life or health.

In yet other respects statute law appears more restrictive than case law. The pregnancy must be terminated by a registered medical practitioner for it to be legal whereas there was no requirement in the Bourne case that the aborter had to be so registered nor was there any requirement of notification nor stipulation of where the operation could be performed. There was no positive duty under common law to perform abortions although there was a risk of being charged with manslaughter by criminal negligence if the woman died. Similarly there is no general duty under statute law (under section 4) to perform abortions, indeed there is a conscience clause but the exceptions to this clause suggest not merely a duty to save life but extends to the need to prevent grave permanent injury to the physical or mental health of a pregnant woman.

The nature, extent, and, indeed, the existence of any exception to the law prohibiting abortion in Scotland had never been judicially determined. It is therefore impossible to say with certainty what effect the 1967 Act had with respect to therapeutic abortion. As the Infant Life Preservation Act 1929 does not extend

to Scotland, abortions may be permitted under the 1967 Act at any stage of pregnancy. However, as Gordon notes,⁹⁰ although the destruction of a viable foetus in utero is abortion; to remove and then destroy a live foetus is presumably homicide and unprotected by the Act.

The 1967 Act did not confer any right to an abortion, it only enables women to seek the advice and consent of two doctors. It conferred a privilege on doctors to carry out abortions on one of the grounds set out in the Act, at a place authorised and in accordance with procedures laid down by the Act. It could perhaps be argued that what the Act did achieve for women was to make them more fully aware that under certain circumstances abortion was legally available and perhaps therefore made them more willing to approach medical practitioners on this matter. It may also have had the effect of inducing a belief that abortion is now a more acceptable solution to unwanted pregnancy or even an alternative to birth control but it would require a more rigorous investigation into the effects of law on public opinion to be able to state whether these possible changes in attitude did in fact occur. The reformers claimed that the Act freed the medical profession. It is asserted here that it did not. A certain degree of medical freedom had existed since the Bourne case. The Act probably enhanced that freedom but it is certainly not unfettered; the Act

90. Gordon, G.H.: The Criminal Law of Scotland, 2nd edn., op.cit., at p.813, 28-05.

merely provided a defence for doctors provided they complied with its provisions, which are of course open to a large degree of subjective interpretation. The 1967 Act was not then a radical measure but a limited reform which in some ways extended and in some ways restricted the conditions of availability of legal abortion.

CHAPTER FOUR

THE CONTINUING STRUGGLE (1967-74)

1. Introduction

The compromise which emerged as the Abortion Act 1967 was unstable. The controversy surrounding the Act's passage did not diminish but was to some extent intensified by SPUC which had failed in its objective of stopping or limiting the Bill. Thereafter it continued in existence to press for the Act's repeal or amendment on highly restrictive lines. This chapter will examine the nature of this controversy and its outcome.

2. SPUC

(i) The people involved

SPUC was formed jointly by two people, Elspeth Rhys-Williams and Alan Smith. Elspeth Rhys-Williams is the grand-daughter of Elinor Glynn, the Victorian romantic novelist, and daughter of Dame Juliet Rhys-Williams who founded the National Birthday Trust Fund, an organisation to promote the dissemination of knowledge on all aspects of childbearing, and who had been a member of the Birkett Committee. Alan Smith was a systems analyst and Conservative Councillor. From its inception Phyllis Bowman, a freelance journalist, was to play a leading role in the organisation as press secretary, rally organiser and public speaker. Viscount Barrington was elected chairman.

None of these people had any children and three were unmarried,

a fact to which attention was often drawn by pro-reformers in attempts to cast doubt upon their right to influence the lives of women faced with unwanted pregnancies. In the early years, the executive was dominated by upper and upper middle-class people with a preponderance of consultant gynaecologists, including three of those who had been most vociferous in opposition to Steel's Bill, namely Professor Ian Donald of Glasgow, Professor James Scott of Leeds and Professor McLure Browne of the Hammersmith Hospital, London.

In more recent years (since around 1972) three younger and more radical figures gradually assumed greater influence within the movement; Nicholas Fogg, sometime Senior Social Worker with St. Mungo's Community, an organisation working with the single homeless in London, and once editor of Christian Action; Austin Williams, a Labour Councillor and Senior Social Worker; and Paul Cavadino who worked with the National Association for the Care and Resettlement of Offenders (NACRO).

Of the ordinary membership little can be said.¹ The executive claimed a large following which increased over the years to around twenty thousand in 1975. It felt that they were branded by the media as hysterical, right-wing reactionaries² whereas they believed they represented a cross-section of working class people. The movement was strongest however in Merseyside, the west of Scotland, east London and the north-east of England.

1. SPUC has never, unlike ALRA, conducted a survey of its members and does not welcome any attempt to do so.

2. Interview with Phyllis Bowman.

Influential names, it was suggested in chapter two, are important to an organisation's reputation and among SPUC's most vociferous M.P. supporters were Conservative M.P.s Norman St. John Stevas and Jill Knight, and Leo Abse, a Labour M.P. who resigned from the British Humanist Association over its policy on abortion and who is on record as stating that:

Surely if you kill a man's child that is the penultimate step to the ultimate emasculation - to the castration of the male himself.

Malcolm Muggeridge too has often added his voice to SPUC's cause. He has stated:

I would like to think that if I were the only man left in the world who believed in the cause [i.e. repeal of the Abortion Act 1967] ... I should still find it worthwhile to stand up and proclaim: man is made in the image of God; and to denounce those who see our generation as just a productive process, to be fostered or aborted like any other poultry, or pigs or mangel-wurzles - in accordance with our material circumstances.

It is noteworthy that Alec Bourne, the gynaecologist involved in the famous case Rex v. Bourne,⁵ also joined SPUC in protest at the 1967 Act which he perceived as extending the law to cover more than 'deserving' cases and as allowing social considerations to influence medical judgement.

(ii) Definition of the social problem

SPUC's definition of the nature of the social problem has not changed since its inception, stemming as it does from the belief in the sanctity of a life which begins at conception. It believes that the foetus is an actual as opposed to a potential

3. Quoted by Sara Vaughan, Morning Star, 14 November 1973.

4. Muggeridge, Malcolm: Speech given at SPUC Rally 1973 Manchester.

5. [1939] 1 K.B. 687 [1938] 3 All E.R. 615.

human being,⁶ and abortion is then defined as murder. Most of the pamphlets sent out by SPUC to potential supporters contain pictures of fetuses and one particular leaflet is composed of various pictures of the result of abortion when carried out by the different methods of performing the operation; dilation and curettage, vacuum aspiration, hysterotomy and saline injection.⁷ The human qualities of the foetus are consistently emphasised in all SPUC literature. It states that the foetus is:

...responsive to pain and touch and cold and sound and light. He drinks his amniotic fluid, more if it is slightly sweetened, less if it is given an unpleasant taste. He gets hiccups and sucks his thumb ... This then is the foetus we know and indeed we each once were.

These leaflets emphasise the human nature of the foetus which is not regarded as an integral part of the pregnant woman's body, since it sometimes happens that it has a different blood group from the mother and it is impossible to have two parts of the same body with different blood groups.⁹ Operations to abort are also not seen as simple operations with few attendant risks but as carrying with them possibly severe complications with regard to both physical and mental health.

Given the human nature of the foetus, SPUC believes that it

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6. Interviews with Viscount Barrington, Elspeth Rhys-Williams, Phyllis Bowman, Margaret White, Nicholas Fogg, and Alan Smith, executive committee members. This belief is stressed in all SPUC literature.
 7. See e.g. SPUC leaflets a. Abortion Kills; b. You paid to have him killed; c. Life or Death.
 8. See SPUC leaflet: Who Imposed their Morality?
 9. Interview with Margaret White GP.

enjoys certain rights the most important of which is the right to be born; that right should be denied only in certain carefully defined circumstances involving considerable danger to the life or health of the pregnant woman. The Abortion Act 1967 did not limit the performance of abortion to such circumstances and is thus viewed as a denial of the rights of the foetus. It is thought that the principle of the sanctity of life, which is regarded as fundamental to British society, will be eroded by the 1967 Act and thus the problem is characterised as being a moral choice between fundamentally opposed values.¹⁰ SPUC also thinks that abortion will encourage promiscuity which is seen as a pressing social and moral problem. Later in SPUC's development the problem is presented as being of a social nature, not solely because it involves a choice of the type of morality society wishes to uphold, but also because the provisions relating to social considerations will lead to the postponement of tackling real social problems such as bad housing conditions, unemployment and low wages.¹¹

The problem is partly defined as medical because of the risks involved in the operation. It thinks these may not be immediately obvious but suspects that they include increased likelihood of spontaneous abortions occurring in subsequent pregnancies.¹² It predicted that the increase in the numbers of abortions performed would lead to lengthier hospital waiting lists.¹³

10. SPUC letter to Prime Minister, April 1968.

11. SPUC Manifesto: Abortion or Social Justice, 1973.

12. Wynn, M. and Wynn, A.: Some Consequences of Induced Abortion to Children Born Subsequently, Foundation for Education and Research in Childbearing, London, 1973.

13. SPUC Press Release, May 1967.

The medical definition also covers the effects of the legislation upon the profession which it sees as opposed to abortion as being a repugnant task contrary to medical ethics and training. In particular SPUC fears for the promotion prospects of those practitioners refusing to perform abortions. Moreover, the exclusion of a 'consultant clause' is seen as permitting wide-spread 'racketeering' by less reputable practitioners who will bring the profession into disrepute.¹⁴

The problem is further defined as legal in that the law is seen as being (and properly being) the embodiment of society's morality and a highly influential educative source of that morality in helping to create a climate of opinion regarding the limits of acceptable, and thus expected, social behaviour. The Abortion Act 1967 is viewed as upholding the morality of only a small minority of 'trendy liberals' and not that of the majority of people. It is further predicted that this piece of legislation will lead to demands for legalised euthanasia.¹⁵

What is missing from the early definitions of SPUC is reference to abortion being a woman's problem. It was not until much later in this period that this aspect is first emphasised. Then abortion is presented as an instrument of exploitation of women occurring in the pressures brought to bear by husbands, parents and lovers, who present it as the only solution to a personal dilemma instead of one alternative among several.¹⁶ It

14. Ibid.

15. Ibid.

16. SPUC Manifesto: Abortion or Social Justice, 1973.

is also feared that women will come to see abortion as an alternative to contraception and thus expose themselves to unnecessary health hazards.¹⁷

It has been recognised that legislation designed to alleviate certain social conditions may subsequently give rise to the perception of new social problems,¹⁸ for example SPUC's increasing emphasis on the exploitation of women, from 1973 onwards. Some of the other social problems perceived by SPUC¹⁹ stem from the implementation of the Act. The increase in the numbers of abortions performed is viewed with disquiet as indicating that abortion on demand exists. Regional variation in abortion rates is also defined as a problem. Variation is thought to result from the differential interpretation of the provisions of the Abortion Act 1967 by the medical profession and is viewed as a measure of the degree of responsibility brought to their work by different members of the profession. Areas with high abortion rates are viewed as being areas in which doctors disregard the intentions of Parliament and vice versa.

The upsurge of private abortion referral agencies and clinics following the passage of the Abortion Act is deprecated. No distinction is drawn between those with charitable status and those which are profit making, although it is agreed that British women do deal mostly with the charitable agencies whereas it is the

17. White, Margaret: Abortion: Moral Problems of Today, Church Literature Association, London, 1973.

18. Rose, Arnold, M.: Law and The Causation of Social Problems, Social Problems, vol.16, pp.33-43.

19. The information on which this section is based stems from interviews with SPUC committee members and the concerns set out in SPUC bulletins.

private profit-making clinics which are seen as attracting foreign women and making headlines such as 'London - Abortion Capital of the World'.²⁰ One aspect of racketeering which gained much emphasis was that known as 'taxi-touting'.²¹ Jill Knight alleged that live foetuses were burned after abortion²² - a claim she later withdrew as being based on misleading evidence.²³ SPUC gave considerable publicity and credence to the investigations of News of the World reporters, Michael Litchfield and Sue Kentish who spent several months examining the operation of the private profit-making and charitable sectors of the abortion business and who offered their findings as an alternative to that of the Lane Committee.²⁴

Briefly, the reporters concluded that there existed organised corruption from the very top to the very bottom of the medical profession in the abortion trade. They claimed that seven pregnancy testing centres and clinics diagnosed Michael Litchfield's pregnancy. It was alleged that girls were literally coerced into having abortions, that from the moment they were declared pregnant by the testing centre they were whisked from one doctor to another so that they ended up in a state of confusion, ready to believe that the only solution to their problems was abortion.

20. See e.g. The Sun, 16 December 1972.

21. For an account of the private abortion sector and its practices see: The Daily Telegraph Magazine, No.370, 20 November 1971.

22. The Guardian, 15 July 1969.

23. The Daily Telegraph, 16 July 1969.

24. Although their findings were originally published in serialised form in the News of the World, for a full account see Litchfield, M. and Kentish, S.: Babies for Burning, Serpentine Press, London, 1974.

It was claimed that Harley Street abortionists had told them that 'the great thing about the Abortion Act is that it has given us the opportunity to perpetuate Hitler's progressive thinking'.²⁵ It was further alleged that one surgeon was trying to sell the bodies of aborted fetuses to factories for the making of soap:

Animal fat is a very valuable commodity. I get some really fat babies. It seems a shame to drop them in the incinerator when they could be put to such good use and also make me an extra bob or two.²⁶

The allegations made by Kentish and Litchfield were later largely discredited²⁷ and the tapes on which the more contentious allegations were reputedly based were never produced when called for by the parliamentary Select Committee on the Abortion (Amendment) Bill in 1975.²⁸

(iii) Stereotype of the deviant

The stereotype of the woman seeking abortion has changed over the years. At first although SPUC recognised that some women did seek abortion for 'genuine' reasons, it more often contended that those who did so were frivolous and promiscuous. Thus Margaret White wrote:

A mother might perhaps claim that her children always go winter sporting at Christmas and her confinement in January would interfere with this to the detriment of their physical

25. Ibid. Introduction.

26. Speech to SPUC Rally, London, 28 April 1974.

27. See Gillie, O., Wallace, M. and Ashdown Sharp, P.: The Sunday Times, 30 March 1975.

28. See Spare Rib, No.39 and The Times, 9 July 1975.

or mental health or even that the birth of a third son would mean taking the other two away from their expensive public schools and sending them to day schools.²⁹

And again this theme is reiterated:

One group to gain will be the promiscuous rich.³⁰

That this view was so far removed from that presented by the media, by public opinion polls and in Parliament at the passage of the Abortion Act probably did little to help SPUC's cause. Latterly however, SPUC has changed its perception of the stereotype deviant to that of a woman needing help; as being pressurised by families and boyfriends into having abortions without any real chance to consider all the alternatives; as being exploited by successive governments who fail to tackle effectively those social conditions which may lead women to seek abortion; exploited by unscrupulous referral agencies and doctors who seek to profit from their misfortune, and exploited by the liberal press which pushes abortion as a responsible solution.³¹ By presenting the woman as a helpless victim who can be 'saved' by concerted action, it is hoped to win greater support for SPUC's cause through making lack of response to such victims appear void of human concern.

The doctors performing abortions and especially those in the profit-making and charitable sectors are very much 'enemy' deviants.³² They are viewed as totally amoral, devoid of any humanitarian

29. White, Margaret: *Having It Taken Away*, Mothers Union Publication, p.5.

30. *Ibid.* p.6.

31. See e.g. SPUC Manifesto: *Abortion or Social Justice*, 1973.

32. See Gusfield, J.R.: *Moral Passage: The Symbolic Process in Public Designations of Deviance*, *op.cit.*

instincts and motivated by avarice. They have been equated with muggers and abortion viewed as socially sanctioned violence. So they were described by Leo Abse in an address to a SPUC rally:

No distinction can be made between the violence of the professional Harley Street abortionist, wresting his tax free cash payments out of women in difficulties and the mugger on the street. The one uses the scalpel and needle, the other the brick and boot. Both are psychopathic and both are releasing their aggression on the innocent: the one releases it upon the unborn child and a bewildered mother, the other on the helpless aged. Both are prepared, without remorse, to kill for money. The only difference between them is that the teenage mugger, who is the product of a deprived home, is sentenced to twenty years' imprisonment whilst the doctor, who is the product of an expensive State provided medical education, has the full protection of the law.³³

(iv) Motivation

Like ALRA, self interest, humanitarianism, moral indignation and symbolism can be seen in the motivation of SPUC's members both at this time and in later years. Boredom, however, was not a motivating factor for, with the possible exception of Elspeth Rhys-Williams, all its key members had full-time occupations. Financial self interest was also not a motivating factor but, given the preponderance of gynaecologists on SPUC's executive, professional self interest cannot be dismissed.

Given the conviction that the foetus is a human being, there exists a humanitarian concern for its welfare. The foetus is seen as being 'innocent', 'defenceless' and in need of special protections:

The most vulnerable and the most innocent being of all

33. Abse, Leo: Speech given at SPUC Rally, 25 March 1973.

is the unborn child ... It cannot be right that in the past five years half a million have been slaughtered.³⁴

That humanitarian concern is also shown towards the woman whom it is thought is endangering her health by having an abortion:

It is not a simple operation, and there can be very serious after effects. The commonest are probably haemorrhage and sepsis, but many patients suffer from severe depression for prolonged periods afterwards.³⁵

There is also a humanitarian concern that her real needs are ignored; that the social conditions giving rise to the need for abortion are dealt with by abortion rather than at their source and the woman is then exploited by social manipulators:

At my hospital, the majority of abortion cases are on grounds related to inadequate housing - a woman living with her husband and two or three other children in a couple of rooms and who genuinely feels that she cannot go on. It is a pretty crazy society which cannot correct its policy and get its social priorities right when housing is in such a poor state.³⁶

Humanitarianism also extends to the nature of society SPUC would like to see:

Choosing abortion as a solution to social problems would seem to indicate that certain individuals and groups of individuals are attempting to maximise their own comforts by ignoring their own prejudices ... It becomes very disturbing when we think that this destructive medical technique may replace love as the shaper of our families and our society ... We must move towards creating a society in which material pursuits are not the end of our lives; where no child is hungry or neglected, where even defective children are valuable because they call forth our power to

34. White, Margaret: Moral Problems of Today, op.cit., p.16.

35. Ibid. p.13.

36. Gordon, Harry: SPUC Manifesto op.cit.

love and serve without reward. Instead of destroying life, we should destroy the conditions which make life intolerable. Then every child regardless of its capabilities or the circumstances of his birth could be welcomed, loved and cared for.³⁷

Within the motivation of SPUC members, there is a fusion of moral indignation and symbolism. Given that abortion and killing are used as inter-changeable terms, there is moral indignation over the numbers of abortions performed. There is indignation that profits are made out of human misery and that society condones such exploitation. This indignation is reflected in the titles of some of SPUC's leaflets, for example Need we kill 500 every day? and You paid to have him killed. It is further evidenced by the following quotations:

We have every right to look back in anger over the way the nation has been betrayed and by people whom it should and did trust. We have a duty to look forward to clearing up the mess. We shall not be popular. We shall be abused and ridiculed but we have the deep satisfaction of being in the right. We bear the responsibility of our generation to think and act as human beings and not as hedonists for whom life is no longer sacred.³⁸

and:

... [we shall] testify to our abhorrence at the State - supported mass murder of babies before they are born - in this outdoing of Herod who at least waited for them to be delivered before the knives came out.³⁹

The objections that SPUC raises against abortion can be seen in part as a wider protest against the values it sees in the society around them. The abortion problem has given SPUC a focus beyond

37. SPUC Leaflet: Life or Death.

38. SPUC, AGM, Minutes, 7 February 1972.

39. SPUC Press Release, 30 April 1972.

abortion itself. It is a symbol of the reaction it experiences to what it perceives as happening in society and for what it would like to see happening. Since abortion is viewed as being contrary to the value of the sanctity of life (which is regarded as fundamental to a civilised society) then abortion policies are viewed as having a dehumanising effect on society. 'The Act has caused moral coarsening in our society.'⁴⁰ But the Abortion Act is itself seen as a product of dehumanising trends and the efforts of selfish people.⁴¹ SPUC sees society very much in Lord Devlin's terms⁴² in that it is viewed as being founded upon cherished values and that an attack on one of these values (viz. the sanctity of life) is a threat to the whole of society. Any change in the law is then seen as a proposed change in moral standards and if the law makers are open to manipulation by moral trendsetters then it may have adverse effects on the moral climate of society.

SPUC views the period between the late 1950s and late 1960s as a time in which the values of those in power changed rapidly from benevolence to self interest, from being protective and conservative to being in favour of change for its own sake.⁴³ Such changes are seen as consolidating or enhancing the position of a few 'woolly-minded, trendy, bourgeois, Hampstead liberals'. Prestige and influence are seen as having moved into the hands of

40. Ibid.

41. See e.g. SPUC Press Releases; July 1968, April 1972, May 1973.

42. Devlin, Patrick, Lord: The Enforcement of Morals, Oxford University Press, London, 1965.

43. The information for this section was obtained by interviews with Elspeth Rhys-Williams, Phyllis Bowman, Margaret White, Nicholas Fogg.

people drawn from the media, the film, pop and literary worlds, all of whom are seen as rejecting traditional middle-class values of hard work, deferred gratification and responsibility to others. The prestige and values of professional people are thought to have slipped in the 1960s, and abortion law reform is seen as a symbol of these changes. Whether these perceived changes actually did occur is open to question; their importance lies in SPUC's belief that they did and that the morality which was seen as disappearing required to be re-asserted.

SPUC's philosophy contains a contradiction in that it discerns its values as being those of the 'ordinary people in this country' whilst consistently calling upon influential people 'to set an example'. Indeed its actions can be seen in part as the approach of a dominant class to those in subordinate positions, an approach Gusfield has termed 'assimilative reform' characterised by a 'come, you can be like us' attitude.⁴⁴ The objection then, although explicitly stated as being to the imposition of a morality on ordinary people, is not so much to that imposition but rather to whose morality and what constitutes that morality. It has no hesitation in naming those it holds responsible for the Abortion Act 1967 and thus for the debasing and trivialising of social values:

I accuse the sponsors of the Act who by their propaganda made the country believe childbirth was in our times a dreadful disease ... I accuse David Steel for his assurances that the Act did not mean abortion on demand when it was obvious that the strong opposition by his supporters to reasonable amendments which would have underwritten this safeguard was specifically designed to ensure abortion on

44. Gusfield, J.R.: *Symbolic Crusade*, op.cit., p.3.

demand. I accuse the mass media for the heavy slanting of their programmes and articles in favour of the abortion lobby. The public was given the impression that all intelligent people were for the Act and that only ignorant reactionaries and Roman Catholics were against it ... I accuse those churchmen who in their zeal to cultivate a "with-it image" have forsaken their Christian heritage and embraced pagan standards ... As long as the Church is not accused by the mass media as being reactionary it would appear to be satisfied ... I accuse my own profession [⁴⁵i.e. medical] of similar errors to those of the Church.

The attitudes adopted on abortion are also seen by some members as a focus on which to argue for a better society, based on caring and responsibility. It is viewed as a time to choose between a society which oppresses under the guise of freedom or one which gives freedom to all, including the unborn child; one in which each member cares for every other member by realising his responsibilities to others and to himself. To decide for the former is seen as being in favour of a 'machine-like' society⁴⁶ in which quality control of human beings is possible through abortion and euthanasia, in which individuals are processed and programmed according to the plans of an élite. To decide for the latter is to allow the great mass of the people to determine and express their own morality.

(v) Aims⁴⁷

When SPUC failed to defeat Steel's Bill, its aim became the repeal of the Act. However it added a subordinate aim, the modified one of seeking amending legislation limiting the legally recognised

45. SPUC Leaflet: The Abortion Act: A Social Malady.

46. Rhys-Williams, Elspeth: The Machine Society, Monday World, Autumn 1969, p.4.

47. See SPUC Leaflet: What do you want to know about SPUC?

grounds for abortion to those it was willing to countenance in Steel's Bill. To some extent then there was a compromise of aims, but it has never concealed its absolute goals. As has been noted earlier, tactical considerations often lead pressure groups to aim for incremental reform, but this willingness to compromise has not been very evident in SPUC's formulation of its aims or the methods it uses to achieve them. It will be recalled that one of the social problems concerning SPUC is the abuses that are seen as arising in the private sector of abortion facilities. However, SPUC has not sought to make their prohibition or regulation a major short-term goal at the expense of its longer term considerations.

3. ALRA

(i) Aims

The problem for pressure groups of organisational adaptation to a changing social environment has long been recognised.⁴⁸ One question which remains is what happens to a pressure group after its goals have been realised fully or partly (or indeed if they appear to have wholly failed). This obviously depends to some extent on the changes which are taking place in the larger environment. If a movement assumes that a static set of conditions will result as a consequence of its efforts, it will fail in the long run.⁴⁹ Its chances of succeeding in the long-term or

48. Clark, B.R.: Organisational Adaptation and Precarious Values: A Case Study, American Sociological Review, vol.21 (1956), pp.327-336.

49. Green, Arnold W. and Melnick, Eleanor: What has happened to the Feminist Movement? in Gouldner, A. (ed.): Studies in Leadership, Harper and Brothers, New York, 1950, pp.277-302.

of consolidating what success it has attained are increased if it continues to change in response to any changing conditions and remains active. This is especially true of groups which have compromised over their original goals in order to achieve some measure of reform.

It has been maintained in this study that what ALRA wanted was very different from what it demanded; that it publicly aimed at modified goals in the hope of achieving some success on which to build for further reforms more in line with its long-term objectives.⁵⁰ A poll⁵¹ ALRA carried out on its ordinary members shortly after the passage of the Act further evidences this, as fifty two per cent thought the Abortion Act 1967 did not go far enough to meet ALRA's aims, whilst one hundred per cent thought that the Abortion Act 1967 went as far as was politically possible at that time.

Given the dissatisfaction with the perceived limited nature of the 1967 Act, it is to be expected that ALRA would remain in existence to further its long-term aims but also to protect what it had already won. The formally stated aims of ALRA were changed, therefore, in September 1968:

1. To act in both a research and educative capacity by obtaining and publishing information relevant to abortion and by encouraging research into all its aspects.
2. To secure such changes in British law as may be considered necessary.⁵²

50. But see: Hindell, K. and Simms, M.: op.cit., p.224 where it is argued that further law reform would have little effect.

51. ALRA Executive Committee Minutes.

52. ALRA Executive Committee Minutes.

It is noteworthy that there was no explicit statement of intent to press for further extension of the law to allow abortion on request. The tactical considerations which had influenced ALRA's formulation of its aims in the past were still evident in this period. At a meeting of the executive in June 1973 it was stated:

The executive committee has weighed up the politics of pressing for abortion on request against the immediate practical value to women in this country. There is a consensus that currently such a policy would not assist any individual to have a pregnancy terminated and would probably lose some of the support which we have long had among the women's organisations and back-bench M.P.s.⁵³

Working towards the realisation of the first aim, ALRA periodically published research reports setting out abortion statistics and commenting upon them.⁵⁴ The tone of the comments was deliberately kept as non-emotive as possible. These reports were always circulated among M.P.s and all interested bodies, e.g. medical and women's groups.

(ii) Definition of the social problem

Of the social problems perceived as arising from the implementation of the 1967 Act, ALRA did not deny that taxi-touting and some racketeering existed and added its voice to demands that they ought to be controlled. However, it saw the solution lying not in legislation but in DHSS administrative action to

53. ALRA Executive Committee Minutes.

54. ALRA Leaflets: Abortion Now series.

require stricter criteria to be applied in granting approval certificates to nursing homes and also to institute a similar system for referral agencies. It saw the major problem as being the large variation of abortion rates in different NHS regions and, in particular, the low rate in those areas where consultant gynaecologists had been vociferous opponents of the 1967 Act.⁵⁵ Its proposed solution was the establishment of special NHS abortion units and the extension of day-care facilities. The opponents of abortion law reform were still largely seen to be the Roman Catholic Church⁵⁶ acting through SPUC.

(iii) Tactics

ALRA adopted a defensive rather than offensive role since it was judged inappropriate on tactical grounds to fight for any further extension of the law. It provided an information service to M.P.s and monitored the development of the implementation of the 1967 Act. The latter was done with a view to stirring the DHSS to take administrative action. In addition to this, however, ALRA diversified. It helped set up a new organisation, the Birth Control Campaign (BCC), which was financed largely in its early years by ALRA and involved many of its key personnel.

55. See ALRA Leaflet: Abortion Now.

56. See ALRA Leaflet: Briefing 2.

Throughout the parliamentary debates on the 1967 Abortion Act considerable emphasis was laid on the fact that abortion was not to be regarded as an acceptable form of birth control; that it was required only for the 'hard-cases' desperately in need. Yet BCC was specifically set up because many of its supporters who had been engaged in family planning work and abortion law reform recognised that:

It is no longer possible to consider contraception, sterilisation and abortion separately ... that there was a need to see all these things as interlinked and as methods which are already being used to control births.⁵⁷

By the time the formation of BCC was publicly announced, abortion, in ALRA's view, was no longer needed for 'hard-cases' only but had become 'a last resort' when contraception failed to prevent unwanted pregnancies.⁵⁸

Yet another voice was to be added to ALRA's cause with the setting up of another organisation, late in 1973, Reason - an Organisation To Give a Common-Sense Perspective on Abortion. Again its establishment was largely due to ALRA's initiative. By its diversification, ALRA hoped to create a climate of opinion in which abortion would be seen not as an alternative but as a back-up facility to failed contraception. By so doing it was hoped that it would perhaps influence the attitudes of those providing contraceptive and abortion facilities and, in the long-term, make it easier to fight for abortion on request.

57. ALRA Private Papers (uncatalogued).

58. BCC Leaflet: Introduction and Prospectus.

4. Comparison of SPUC's tactics with those of ALRA

Although SPUC's principal aim is to 'uphold at all times our belief in the sanctity of life',⁵⁹ which requires orientation to an absolute value in terms of activities, its desire for legislation imposes tactical considerations upon the group. It requires acting as a pressure group within the population in general and on Parliament in particular. A pressure group works within a particular framework and its success will be determined to some extent by its ability to come to terms with this framework.

ALRA continued as a tactically effective pressure group by its adaptation to and careful manipulation of the rules governing pressure group activity. It pursued its policy of trying to keep all its statements as 'reasonable' and as free from emotive language as possible. It carefully followed the implementation of the Abortion Act, relying on official sources such as the Registrar-General's Quarterly Returns on abortion figures, and publicised those figures in simplified form.⁶⁰ It did not deny that abuses had occurred as a result of the Act; nor that some doctors working privately were charging what were thought to be unduly large fees and urged the General Medical Council (GMC) to discipline its own members for abuse of financial opportunities afforded by medical practice.⁶¹ It expressed concern over the

59. See SPUC Leaflet: What do you want to know about SPUC?

60. See e.g. Abortion Now series, available from ALRA.

61. GMC Booklet: Functions, Procedure, and Disciplinary Jurisdiction, 1970.

activities of commercial referral agencies and the high fees charged by them and urged the DHSS to take administrative action.⁶² ALRA was willing to support any legislation seeking to curb the activities of such agencies provided the charitable sector was exempt from such legislation. It thought the latter necessary to temper the unevenness of availability of abortions under the NHS, and opined that their fees were reasonable and that some of the money obtained was used for a loan system to other patients; and that the charitable agencies provided counselling services. ALRA constantly urged better NHS provision of facilities for abortion as the best method of eradicating most of the abuses arising from the 1967 Act.

ALRA continued to seek the support of other groups including the CWG, the National Union of Students, the Conservation Society, the British Humanist Association and the Doctors' Over-Population Group. In addition it started to initiate contact with the Women's Movement and with groups such as Women in Media and the Fawcett Society. It was constantly looking for channels of influence to expand its base as well as consolidating established links. Also it continued to note changes in parliamentary opinion, concentrating its efforts on its known supporters and the 'don't knows' rather than waste its energies on the die-hard opponents. SPUC's activities were carefully monitored and countered in every way by ALRA. Claims about aborted fetuses being drowned, burned or left to die were carefully pursued

62. For ALRA's views on the 'abuses' see Evidence submitted to the Lane Committee, ALRA publication, 1972.

as to their accuracy, and denied when possible. It commissioned further opinion polls which showed support of the Act.⁶³

By contrast, SPUC did not effectively master pressure group techniques. Its approach to the passage of the 1967 Act had been haphazard, concentrating on organising a petition to demonstrate public opposition to the Bill rather than lobbying and briefing M.P.s. At the beginning of this period, SPUC made no concentrated attempt to come to terms with the way pressure groups can act on Parliament. Any letter writing was on a haphazard basis wasting effort either by covering all M.P.s, including known diehard opponents, or by not consistently following up approaches to known supporters or equivocators. It did not systematically compile lists of known supporters, known opponents and potential supporters, nor monitor the way M.P.s voted on attempts to amend the 1967 Act. Nor did it ascertain the attitudes of new M.P.s elected at general elections, or balance the weight of opinion in each session.

Although desiring amending legislation, SPUC made no effort to draft a suitable Bill. Yet the time between the private members' ballot and the lodging of Bills is short, drafting is technically complex and it is advantageous for a pressure group to have a Bill ready to offer to sympathetic members winning a place in the ballot.

63. See later in this chapter.

Indeed, SPUC maintains that it did not lobby those M.P.s who did win places in the ballot.⁶⁴ SPUC has organised several lobbies of Parliament in addition to specific lobbying at the time of various private members' Bills. The most notable was in November 1973 for the launching of its manifesto Abortion or Social Justice which many thousands of people attended.

SPUC did succeed in having several meetings with the DHSS, but this avenue of influence can be used to greatest effect by pressure groups of an 'interest' rather than a 'cause' nature because of the need on the part of the ministry to secure the compliance of many 'interest' groups. It may only 'take note' of the views of a 'cause' group and discussions with the latter are usually of a general nature, with little specific result.

Another method of influencing Parliament, and indeed the general public, is by showing a large body of support for a cause. To this end, mass rallies and demonstrations were held each year attracting between fifty and one hundred thousand demonstrators.⁶⁵ These demonstrations were augmented by the laying of wreaths on Holy Innocents Day to commemorate the 'unborn dead'.⁶⁶

Within the movement itself there was no attempt made to have any organised division of labour. Decisions appear to have been

64. Interview with Elspeth Rhys-Williams.

65. See e.g. figures quoted by Daily Mail, 3 March 1973.

66. See SPUC Bulletins for full account of these activities.

made by whoever was on hand at the time. Information issued by SPUC was not checked by people specialising in the medical/social/moral aspects of the problem (as in ALRA) and yet much of the information disseminated was subject to criticism, not merely because it was thought emotive but because it was shown to be factually inaccurate or backed by inconclusive evidence, for example Jill Knight's statement that live fetuses were being burned,⁶⁷ and the Wynn Report⁶⁸ which, although initially praised,⁶⁹ was subjected to later criticism.⁷⁰ SPUC had no lobby organiser, letter-writing organiser or speakers panel. What it did, however, was to organise a nationwide network of groups, which would have an important influence later.

ALRA has always accused SPUC of being, among other things, a front for the Roman Catholic Church, which SPUC denies. But it makes no attempt to dispel the image or accusation by polling its members, whereas ALRA does not hide the fact that the majority of its members are agnostic/atheistic/humanist. It is noteworthy that SPUC advertises mainly in the newspapers of the Roman Catholic and Anglican Churches.⁷¹ It does not adopt a systematic policy of trying to get other groups to pass resolutions supporting its cause. Instead it relies on other groups formed

67. See fn. 23 supra.

68. Wynn, M. and Wynn, A.: op.cit.

69. See e.g. BMJ 3 March 1973.

70. See Potts, D.M.: BMJ 24 March 1973.

71. Interview with Elspeth Rhys-Williams.

specifically to fight the 1967 Abortion Act, e.g. Life and Let-Live with which, albeit sporadically, it works.⁷² Among groups with wider interests than abortion, SPUC receives support from the Anglican Mothers' Union (of which Margaret White, a SPUC committee member, is Vice Chairman), the Festival of Light and the National Viewers' and Listeners' Association.

Pressure groups often achieve some of their objectives by compromising on their long term goals and using what modicum of success they achieve on a limited front to further long term aims. SPUC however appears unwilling to compromise. The language SPUC uses appears emotion charged; the equation of doctors who perform abortions on grounds other than risk to life with muggers; the accusations levied at those held responsible for the Act; the characteristics ascribed them as being, not misguided, but inhumane manipulators, probably makes compromise difficult and perhaps leads to a hardening of attitudes.

5. The mass media

One important source of influence in creating a 'climate of opinion' is the media.⁷³ Newspapers have a built-in need to generate news and much of what finds its way into the press is of a sensational nature. On the abortion issue, the popular dailies particularly concentrated on touting, disreputable clinics and the

72. Ibid.

73. For a discussion of the role and influence of the mass media see Cohen, S. and Young, J.: *The Manufacture of News*, Constable, London, 1973.

horror of the operation. In 1971 the Daily Mirror invited its readers to send them their personal experience of abortion. It concluded, under the headline 'The shattering truth':

A scream of heartbreaking stories ... In almost every case the "message" delivered, the experience described was a tragic one ... The overwhelming impression from these letters⁷⁴ is that people are appalled by this operation.

The Daily Express reported that many hundreds of foreign women were invading London seeking abortions,⁷⁵ and the general impression gained was that London was the abortion capital of the world. The Evening Standard⁷⁶ revealed the taxi-touting prevalent at London Airport; touts were reputed to earn up to £2,500 a week. Such stories undoubtedly had an effect on the climate of opinion. Demands were made for an inquiry into the working of the 1967 Act both in Parliament and by outside bodies e.g. the main churches called for an inquiry which was set up in 1971.⁷⁷

6. Public opinion

It is notoriously difficult to assess public opinion over any issue. Opinion polls give some indication of it, and between 1967 and 1973 several polls were conducted which allow for limited comparison of any change in opinion since not all polls were

74. See Daily Mirror 29 March 1971.

75. Daily Express 2 July 1969.

76. Evening Standard 7 January 1970.

77. Lane Committee on the Working of the Abortion Act.

carried out by the same organisation and both the questions asked and the methods used varied. Subject to their limitations, however, they are useful given the lack of other evidence.

In 1970 ALRA commissioned NOP to undertake a survey of the general public's attitudes to abortion. The survey was repeated in 1972 and 1973 and little change was observed.

Question 1. Do you think the Act is right or wrong to allow legal abortion if the pregnancy may damage the pregnant woman's physical or mental health taking account of her circumstances?

Percentage of Public Opinion

	1970	1972	1973
Right	71	72	68
Wrong	23	21	23
Don't Know	6	7	9

Question 2. Do you think the Act is right or wrong to allow legal abortion if the pregnancy may damage the health of her existing family ...

Percentage of Public Opinion

	1970	1972	1973
Right	61	59	54
Wrong	29	30	31
Don't Know	10	11	15

Question 3. Do you think the Act is right or wrong to allow legal abortion if there is substantial risk that the child would be born seriously deformed.

Percentage of Public Opinion

	1970	1972	1973
Right	77	78	75
Wrong	16	15	16
Don't Know	7	7	9

Question 4. Do you think the law should be:

Percentage of Public Opinion

	1970	1972	1973
Left as it is or changed to make it easier.	55	47	48
Changed to make it more difficult.	38	44	35
Don't Know	7	10	17

Other surveys also indicated that the majority of the general public supported the 1967 Act. In 1971 the Daily Express commissioned Harris Poll to conduct a survey. This showed that 86 per cent were in favour of abortion when the mother was likely to become either physically or mentally ill; 81 per cent were in favour of abortion where there was risk of deformity in the child if born; 15 per cent were in favour of abortion at the woman's request and only 17 per cent thought abortion was too early available. An Opinion Research Centre Poll for the

Evening Standard in 1970 included one question relating to the availability of abortion which showed that 20 per cent of men and 15 per cent of women thought abortion should be available to anyone who wanted it and only 6 per cent of men and 9 per cent of women thought abortion should never be legal.

In a Gallup survey for SPUC in 1973, 54 per cent of men felt abortion should be allowed in particular(unspecified) circumstances and 60 per cent of women shared this view. Eleven per cent of men and 16 per cent of women thought abortion should never be legal and 20 per cent of men and 15 per cent of women thought it should be available on demand.

Subject to the limitations of such polls, the majority of public opinion did appear to be in support of the 1967 Abortion Act.

7. The churches

In 1970, The British Council of Churches' Advisory Group on Sex, Marriage and the Family produced a report on the working of the Abortion Act 1967.⁷⁸ This report concluded that although it was too soon to assess responsibly or to make firm judgements on the effects of the implementation of the Act, nevertheless it was essential to assemble and examine information on which an informed assessment could be made. It recommended that an independent enquiry should be instigated in order to review the

78. Report of the British Council of Churches: The Abortion Act 1967-69: A Factual Review, 1970.

working of the 1967 abortion legislation. This call for an independent enquiry was to be upheld by all the major denominations, including the Church of Scotland and the Methodist Church.

By 1974, the Church of England was of the view that 'the Abortion Act had gone badly wrong'.⁷⁹ The General Synod of that year passed a motion presented by the Bishop of Wakefield calling on the Government to modify the law, in such a way as to recognise the interests of both mother and child, to eliminate abuses and fully protect all medical and nursing staff claiming conscientious objection.⁸⁰

In the debate, the Bishop of Wakefield explained his motivation for framing the motion:

I would venture the opinion that abortion is a kind of murder ... The fact that it is legal does not make it moral. Nothing could indicate more surely the decline of Christian belief and standards in this country than the legalising of abortion. It is a very short step from abortion to euthanasia and to the liquidation of those who are a social burden ...⁸¹

He urged the creation of NHS abortion units to remove abortion from the private sector of medicine and that all abortions after the twelfth week of pregnancy should be prohibited.

In 1974, too, the Vatican issued a sternly worded declaration⁸² which reiterated a total ban on abortion. The document states that

79. The Times, 20 February 1974

80. Report of Proceedings of General Synod, vol.5, No.1, February 1974.

81. Ibid.

82. Declaration on Procured Abortion, 1974.

the first right of every human being is its life:

He has other goods and some are more precious, but this one is fundamental - the condition of all the others. Hence it must be protected above all others. It does not belong to society, nor does it belong to public authority in any form to⁸³ recognise this right for some and not for others.

The committee established by the Roman Catholic Church in the United Kingdom to examine abortion with a view to recommending changes in the law⁸⁴ took as their starting point the fact that legalised abortion (under certain defined circumstances) was part of the fabric of contemporary British society and it was as such the issue would be examined rather than as defined in Catholic teaching. It recommended that the law required amendment in order to prevent abortion on demand. This would be best achieved by requiring that one of the two consenting doctors should be a consultant gynaecologist. It further recommended that all abortions be prohibited after the twelfth week of pregnancy.

8. The medical profession

The medical profession did not argue so intensely over abortion as it had done immediately prior to 1967,⁸⁵ but nevertheless produced a number of substantial reports in response

83. See report in The Times, 26 November 1974.

84. See The Tablet, 5 February 1972.

85. As evidenced by the comparative lack of correspondence in the medical journals during this period.

to the calls for an independent enquiry which led to the setting up of the Lane Committee on the Working of the Abortion Act⁸⁶ and the subsequent need for submission of evidence to that Committee.

(i) The BMA

A leading article in the British Medical Journal in 1969 described the 1967 Act as a piece of:

Hasty legislation combined with lack of agreement both in the medical profession and among the general public during formulation [which] has resulted in a⁸⁷ more than usually imperfect piece of legislation.

The same feeling led to a resolution being passed at the July 1969 BMA Annual Representative Meeting which expressed concern over the implementation of the Act and recommended that the Association itself set up a committee to consider the Act's effects and workings.

The committee was set up under the chairmanship of Professor Ian Donald, who had been an active opponent of the 1967 Abortion Act and who was a committee member of SPUC. Professor Donald is on record as stating that the 1967 Act was 'a doctrine of hideous atheistic expediency' and that the present era was one of 'sex-sodden prurience'.⁸⁸ His appointment caused such disquiet that the BMA admitted that complaints had been received from its members and that the names of other members of the committee were being kept secret.⁸⁹

86. Report of the Committee on the Working of The Abortion Act, Cmd.5579, vols. 1, 11 and 111, HMSO, 1974. Hereinafter the report will be referred to as 'Lane' or the 'Lane Committee'.

87. 1969 BMJ Vol.1 p.199.

88. Quoted in New Humanist, May 1972.

89. The Daily Telegraph, 26 January 1970.

The report of this committee⁹⁰ called for the setting up of an independent enquiry into the workings of the Act. It believed the public expected abortion on demand, contrary to the declared intention of Parliament, and therefore the matter warranted full examination as did the existing regional variation in abortion rates. The report further recommended that there ought to be more adequate provision of contraceptive services and an improvement of NHS facilities for abortion, by the establishment of special clinics within the NHS framework.

The BMA evidence to the Lane Committee was published in 1972.⁹¹ Again the fear was expressed that the lack of clarity in the 1967 Act led the public to expect abortion on demand. It was hoped that the committee would stress that that had never been Parliament's intention. Furthermore the BMA recommended:

- a. That comprehensive contraceptive services be provided by the NHS.
- b. That more help be given to unmarried mothers to stay at work while raising children.
- c. That more provision be made within the NHS so that every woman with proper grounds for abortion under the terms of the Act should be able to obtain it in an NHS hospital.
- d. That termination of pregnancy should be undertaken at the earliest possible stage, preferably by the twelfth week and that it should be considered normal practice for a gynaecologist to refuse termination after the twelfth week.

90. BMJ (Supplement), 8 May 1971.

91. BMJ (Supplement), 29 January 1972 and (Supplement) May 1972.

- e. That better regional provision be made of NHS facilities i.e. better and more accommodation and staff and that the idea of special abortion units within hospitals but geographically sited close to gynaecological departments be given careful consideration.
- f. That there should be sufficient numbers of gynaecologists in each area to terminate pregnancies.
- g. That prospective studies be set up into the long term general and reproductive health of women and of the community; on the effects of women not having an abortion that has been requested and on the unwanted children born as a result of refusal to terminate.

(ii) The RCOG

In the controversy surrounding the passage of the 1967 Abortion Act, the RCOG had been one of the strongest bodies in voicing its objections to the Act and repeatedly suggested that its advice was of the greatest, if not the only, relevance.⁹² It is hardly surprising therefore that it immediately established a committee to enquire into the first years' working of the Act.

The themes which had underlined the RCOG position prior to the passage of the 1967 Act are further evident in this report,⁹³ in which the hostility of the RCOG to the Act is evident:

92. See chapter 3 supra.

93. See EMJ 30 May 1970, pp.529-535.

When the Bill which resulted in the Abortion Act 1967 was under discussion the [RCOG] ... repeatedly gave advice as to the form and likely consequences of the proposed legislation. Such advice, based on first-hand expert knowledge, was accepted only in part ... [We] insisted that induction of abortion is indicated only where, in the opinion of medical attendants, it is less dangerous to physical and mental health than is continuation of pregnancy. Abortion on social grounds ALONE, or on demand, was regarded as unethical and also undesirable ...

Had our advice been heeded many of the abuses which are now worrying its sponsors would have been prevented.⁹⁴

The RCOG circulated a questionnaire to all NHS consultant obstetricians and gynaecologists in England and Wales, which elicited a response rate of 80 per cent. Among its more important findings were that only 6 per cent of consultants had a conscientious objection to all abortion; that 58 per cent wished the 1967 Act to be amended restrictively whereas only 2 per cent wished it to be amended to extend the grounds on which legal abortion is available; and that only 28 per cent were happy with the provisions of the 1967 Act as they stood. By far the greatest number of those seeking more restrictive amendments wished those to cover provisions allowing consideration of the health of existing children and social conditions alone (what is meant by social conditions alone is unclear since there is no provision within the 1967 Abortion Act which allows 'social conditions alone' to constitute sufficient grounds for legal termination). All this, taken together, meant 47 per cent objected to socio-economic

94. Ibid.

considerations being part of the decision to terminate; an overwhelming majority (92 per cent) were against abortion on demand and 80 per cent were in favour of the operation being performed only by or under the direction of an NHS consultant gynaecologist; although 48 per cent thought special abortion units should be set up within the NHS it is perhaps significant that only 21 per cent were prepared to work in such units; 58 per cent thought that an increase in abortions performed would lead to a drop in recruitment to the speciality.

Running through the commentary of the report is a concern for the effect of the 1967 Act on the practice of gynaecology. Gynaecologists were not thought to have altered their views but were subject to increased demand for legal abortion and this was the only reason for the rise in numbers of abortions performed. This was thought likely to lead to a drop in recruitment to the speciality which would have serious consequences.⁹⁵ Again the RCOG expressed the view that the operation was neither simple nor without attendant risks and that only a consultant gynaecologist was in a position to judge its necessity:

... only in this way can women escape from risks the presence of which they themselves cannot judge. Indeed only an experienced gynaecologist can properly decide whether it is more dangerous in any case for pregnancy to continue than it is to induce abortion.⁹⁶

95. Ibid. at 532.

96. Ibid. at 533.

Although 50 per cent thought therapeutic abortions should not be allowed except in NHS hospitals, nevertheless the RCOG did not want to see the closure of 'approved places':

Gynaecologists are afraid that if the "approved places" were closed they and their departments would be overwhelmed with demands for abortion on social grounds alone, they wish to protect themselves ...

The real problem however was seen as being one of abortion on demand:

... the legislators, the Press, and a small group of agitators have, ever since the enactment, fostered the idea that it provides for abortion on demand, or for social and economic reasons alone ...

When the Abortion Bill was under discussion its advocates repeatedly assured the Houses of Parliament that abortion on demand was not their object. Had they done otherwise it is unlikely the Bill would have become law. Once the Bill was passed, however, there had been a persistent and intense campaign which has had the effect of making the public believe that any woman has a right to have a pregnancy terminated if she so wishes, and that gynaecologists have a duty to apply their surgical skills when told and irrespective of their expert judgement ...

[This] is certainly causing disquiet among gynaecologists.⁹⁸

The desire to avoid degradation of status is still evident:

Obstetricians and gynaecologists are not to be regarded as technicians ...

Finally the RCOG report recommended that:

The time has come for the legislators to decide whether they and the community they represent really want abortion on demand. If they do not, this should be made clear ... If they do they should say so, modify the Act and make provisions which do not involve coercion of unwilling gynaecologists ...¹⁰⁰

97. Ibid.

98. Ibid. at 534.

99. Ibid. at 535.

100. Ibid.

These themes were also evident in the RCOG's submission¹⁰¹ to the Lane Committee, especially the demand for Parliament to decide what was actually wanted with respect to abortion.¹⁰² This report went further however in recommending positive measures to curb prevalent abuses. These were:¹⁰³

- a. That one of the two doctors signing the certificate be the person undertaking the operation.
- b. That although the closure of the approved places would go far to stop abuse, unless the present law is strictly interpreted this would cause chaos in NHS hospitals so it would be necessary if there was to be abortion on request, to replace these approved places by newly created abortion units.
- c. That residency clauses be introduced to stop foreign women coming to Britain for abortions.
- d. That notification should be tightened up; post-operative care should be made compulsory longer and that further reports should be made.
- e. That there be further limitation of the duration of pregnancy beyond which abortion can be induced.

(iii) The Royal College of Psychiatrists (RCOP)

The branch of the medical profession most in favour of reform of the law at the time of the passage of the 1967 Abortion Act was the psychiatry speciality.¹⁰⁴ During this period,

101. See BMJ 29 April 1972, p.303.

102. See report in The Times, 28 April 1972.

103. BMJ, 29 April 1972 p.303.

104. See chapter 3 supra.

psychiatrists were again the most favourably disposed to the 1967 Act as is evidenced by their submission to the Lane Committee.¹⁰⁵ The RCOP strongly supported the Act which it thought 'had worked well'. However, it did think that certain abuses had arisen resulting from inadequate provision of NHS facilities and regional variation in abortion rates and advocated special NHS abortion units to help eradicate these abuses. It took the view that abortion, despite its unpleasantness, was currently necessary for the mental health of the nation. Underlying this view was the belief that:

... as a nation we are now very much less concerned to promote increased reproduction.¹⁰⁶

and that:

A major aim of social policy should be to ensure that every child is wanted and can enjoy a loving and secure environment for his upbringing ... [which] is an essential requirement for good mental health.¹⁰⁷

The report went even further in almost recommending abortion on demand:

There is an increasing body of opinion amongst psychiatrists as well as amongst some GPs that there should be abortion on demand, at least in the first three months of pregnancy and that more discrimination should be reserved for patients in the second and third trimesters for whom abortion is more difficult.¹⁰⁸

(iv) Opinion polls of general practitioners (GPs)

During this period a number of opinion polls were carried out which showed that the majority of GPs tended to favour the

105. British Journal of Psychiatry, vol.120, (1972) pp.449-451.

106. Ibid. p.451.

107. Ibid.

108. Ibid. p.450.

provisions of the 1967 Act or further amendment to make abortion easier to obtain.

The first of these polls was undertaken by ALRA in 1969 of six sample areas in England and Wales:¹⁰⁹ Cardiff, Leeds, south-east London, Manchester, Oxford, Cumberland and Westmorland. Its findings suggest that 64 per cent of GPs thought the Act had assisted them to help their patients and that only 19 per cent thought the 'conscience clause' was inadequate in safeguarding doctors with religious or ethical objections to abortion.

NOP conducted three surveys of GP's attitudes during this period. Their results were:-

Question: The Abortion Act has been in operation since April 1968. Having regard to its essential provisions, do you think that the law should be:-			
	January 1970	March 1972	September 1973
Left as it is or changed to make abortion easier	66%	70%	73%
Changed to make abortion more difficult	28%	26%	23%
Undecided	6%	4%	4%

A further study was conducted in 1974 by the Gallup organisation for the medical newspaper, Doctor.¹¹⁰ This study was however concerned primarily with family planning so that the question relating to abortion is not strictly comparable with the other

109. See ALRA Annual Report, 1969-70.

110. See Doctor, 28 November 1974, vol.4 No.47.

surveys. Nevertheless it is noteworthy that 'three out of every four GPs approved of abortion on social grounds whether for a schoolgirl who had planned a career before marriage or for a married woman with four children and limited financial means'.¹¹¹ Nevertheless 20 per cent of the GPs interviewed said abortion on social grounds was rarely or never available in their area and more than a third said it was available only occasionally. This was interpreted to mean that 3 out of every 5 GPs were finding it difficult to obtain help for a woman who might have a reasonable case for termination of pregnancy.¹¹²

9. Legislative attempts to amend the 1967 Abortion Act

During this period four M.P.s tried unsuccessfully to introduce legislation in Parliament to amend the 1967 Act.

(i) Norman St. John Stevas' Bill 1969

The Abortion Act 1967 had been in operation for less than ten months when on 16 February 1969 a motion was presented in Parliament by a Conservative M.P., Norman St. John Stevas, seeking leave to bring in a Bill to improve the law governing abortion and the 'status and rights of the medical profession in relation thereto'. His objections appear to have been three-fold:¹¹³

111. See report in The Times, 28 November 1974.

112. Ibid.

113. See Catholic Herald, 24 January 1969 and The Universe, 10 July 1969.

- (a) to destroy the medico-social clause which legalises abortion in the interests of the health of existing children of the family;
- (b) to strengthen the conscience clause; and
- (c) to provide for a 6 month residential qualification to prevent foreign women entering Britain to obtain abortion.

He was supported by SPUC, the BMA and the RCOG. When he introduced his Bill under the Ten Minute Rule on 15 July 1969,¹¹⁴ St. John Stevas outlined only one amendment which had been the source of much bitter debate during the passage of the 1967 Act viz. the proposal that one of the two certifying opinions should be that of an NHS consultant gynaecologist or a doctor of equivalent status approved by the Minister of Health from panels submitted by the professional medical bodies. This, he explained, would rectify many of the abuses which were growing out of the Act. In reply, David Steel deplored the emotional approach of the anti-reformers and described St. John Stevas' proposed amendments as a 'thoroughly regressive measure'. The real problem was regional variation within the NHS, especially the restrictive practices in centres like Birmingham which themselves stimulated the growth of private abortion clinics. The House divided and St. John Stevas was refused leave to introduce his Bill, albeit by a very narrow majority of 210 votes to 199.

(ii) Bryant Godman Irvine's Bill 1970

The very narrow defeat of St. John Stevas' Bill encouraged those

114. Hansard, H.C. vol.787, cols.411-424, 15 July 1969.

opposed to the terms of the 1967 Act to try again in the next session. Bryant Godman Irvine, a Conservative M.P., had drawn ninth place in the private members' ballot so the chances of his Bill becoming law were not particularly favourable. His Bill, the Abortion Law(Reform) Bill, was similar to that introduced previously by St. John Stevas. He wished one of the two certifying doctors to be an NHS consultant gynaecologist or a medical practitioner of equivalent status approved for the purpose of the Act by the Secretary of State for Health and Social Services. Again SPUC, the BMA and the RCOG supported this Bill which had its second reading on 13 February 1970.¹¹⁵

Godman Irvine professed to want only to safeguard the interests of the health of the women concerned. He was certain that in cases where consultants had conscientious objections they were most meticulous in seeing that those cases were handed over to people who held different views. St. John Stevas expressed the view that one effect of the Bill could be to reduce the number of abortions performed, a result he personally would welcome. Dr. John Dunwoody, the Government's spokesman, referred to the Bill as misdirected because the Abortion Act was working reasonably well. He admitted however that a very small number of doctors in the private sector were 'doing things which could not be approved of' but that these abuses could and would be checked by administrative action which would take the form, for example, of increased inspection of approved places and

115. Hansard, H.C. vol. 795, cols. 1653-1703, 13 February 1970 and Appendix 1(10) for text of Bill.

their facilities in relation to numbers of patients, and the issue of approval certificates on an annual basis with no automatic renewal. Douglas Houghton, defended the 1967 Act making a plea for a 'cease-fire' of the 'sniping' at the Abortion Act in order to give it a fair chance of working. It being almost four o'clock, he asked the House to register a vote on the Bill but a Conservative M.P., Sir Stephen McAdden, an opponent of the 1967 Act, rose to speak, thus making this impossible. An attempt to move the closure by a Labour M.P. and supporter of the 1967 Act, Peter Jackson, failed; the Speaker refused to accept it as discussion had lasted less than three hours, and the debate was adjourned.

It seems probable that the supporters of the Bill deliberately 'talked-out' the Bill in order to avoid defeat given the large number of pro-reformers in the House on that day and the Government's attitude. Both Leo Abse and St. John Stevas, noted supporters of restrictive abortion law, had spoken at length on the preceding Bill (on death-bed marriages); and it was a known opponent of the 1967 Act who was responsible for preventing a vote. The Bill was later dropped by its proposers.

(iii) John Hunt's Bill 1972

Another Conservative M.P., John Hunt, made a further amending attempt when he introduced the Medical Services (Referral) Bill on 18 February 1972.¹¹⁶ This Bill differed considerably from its

116. Hansard, H.C. vol.827, col.460, 18 February 1972. See Appendix 1(11) for text of Bill.

immediate predecessors in that it did not seek to amend the criteria for legal abortion as contained in the 1967 Abortion Act but sought to curb lay profiteering by preventing commercial abortion agencies from taking fees from women seeking abortion. The charitable sector was exempt from the terms of the Bill which read:

1. Subject to the provisions of the next following sub-section, it shall be an offence for any person to charge or to seek to charge a fee for or in connection with referring or recommending a person to a medical practitioner, hospital, nursing home or other establishment offering medical services.

2. The provisions of the foregoing sub-section shall not apply to a referral or recommendation made by a registered medical practitioner or by an accredited official or representative of a charitable body.

This Bill, although not having the explicit support of ALRA, nevertheless did not meet with that body's opposition and was supported by the BMA, the Medical Practitioners Union (MPU) and David Steel. To SPUC however the Bill was seen as falling far short of its objectives, as 'only scraping the surface of the abuses'.¹¹⁷ There is some evidence that the Government was not willing to support it, not because of objections to its contents, but because it was deemed inappropriate to undertake legislation whilst the Lane Committee was sitting.¹¹⁸ In the event, Hunt's Bill proceeded no further as he had drawn only a very low place in the private members' ballot, twelfth, and there proved to be insufficient parliamentary time.

117. SPUC Press Release, 24 January 1972.

118. ALRA Private Papers (uncatalogued).

(iv) Michael Grylls' Bill(s) 1974

The last attempt during this period to amend the law was by another Conservative M.P., Michael Grylls, who drew a relatively high place in the private members' ballot, fifth, and was thus in a relatively strong position to see his Bill become law. Originally Grylls intended studying the report of the Lane Committee, which was expected by the end of 1973, before framing his proposed legislation.¹¹⁹ In the event, the Lane Committee was not ready to report and Grylls decided that:

The issue is such an emotive one that I think it better not to get involved in the medical side at all, but to concentrate on the rackets and exploitation that are going on. It is this highly unattractive financial side that concerns me ...

People should not be making vast profits out of a woman's misfortune, and I would think there is room for expansion of the charitable pregnancy services. The Act is law and I recognise the social need for it, although I dislike it. It does safeguard women from the backstreet abortionist.¹²⁰

The Abortion (Amendment) Bill had wide approval as is evidenced by the diverse character of Grylls' parliamentary supporters, amongst whom were Leo Abse and William Deedes, both opponents of the 1967 Act who often gave their voice to SPUC's cause, and David Steel and Douglas Houghton, both supporters of the 1967 Act. Government support was also anticipated. Grylls is on record as saying that from contacts he had with the DHSS 'the indications

119. The Times, 20 November 1973.

120. The Times, 17 December 1973.

are that they will be pleased to see this sort of measure passed'.¹²¹ ALRA saw the Bill as not threatening the 1967 Act and therefore encouraged Grylls in his attempt to curb profiteering, provided that the charitable sector was exempt from any provisions he might formulate.¹²² SPUC was less sure of the line it wished to take; there was a real chance of amendment given Grylls' relatively high place in the ballot, so that an opportunity existed for real change, provided Grylls could be persuaded to formulate his proposals on much stricter lines than he had so far announced.¹²³ In the event, SPUC failed to persuade Grylls to its viewpoint and condemned the Bill as 'providing a respectable veneer to abortion brokers'.¹²⁴

The main provisions of the Bill formulated by Grylls read:

1. No person other than -

- a. a registered medical practitioner; or
- b. a person for the time being approved for the purposes of this section by the Secretary of State shall give to any other person any advice or information to which this section applies in circumstances in which he receives or expects payment (whether from the person to whom the advice or information is given or from any other person, and whether under an agreement or otherwise) for doing so, or for providing in connection with giving that advice or information, any other advice, information, service, facility, or article.

121. The Times, 2 February 1974.

122. ALRA Private Papers (uncatalogued).

123. SPUC Private Papers (uncatalogued).

124. SPUC Bulletin No.14.

2. This section applies to any advice or information (whether given to the woman to whose circumstances it relates or to any other person) -

- a. indicating a person to whom a woman may apply for the purpose of obtaining, or fulfilling the requirements for obtaining, treatment for the termination of pregnancy in accordance with the Abortion Act 1967;
- b. indicating a hospital or place in which such treatment may be provided; or
- c. indicating a person from whom advice or information to be effect mentioned in paragraph (a) or (b) above may be obtained.

However, in the event Grylls' Bill did not progress further for Parliament was dissolved, a general election called and the Bill therefore fell.

In the next parliamentary session, on 8 May 1974, Grylls reintroduced the Bill under the Ten Minute Rule.¹²⁵ He explained that he thought his Bill would appeal to both sides in the abortion controversy for it concerned only one aspect of the workings of the 1967 Act on which there was widespread disquiet viz. the scandals arising from referral agencies and advisory bureaux through which unscrupulous profiteers flourished and from taxi toutting. The

125. See Hansard, H.C. vol.873, cols.403-6 and col.853; vol.874, col.2084; vol.875, cols.947-8, and Appendix 1 (12).

purpose of the Bill was to establish a method of licensing agencies and bureaux on lines similar to those already existing for abortion clinics. He was granted leave to introduce the Bill which, such was the support in the House, was given an unopposed second reading, an important occurrence and a relatively unusual one, for a single cry of 'object' would have stopped its progress. Grylls fared less well when the Bill's committee stages began on 24 July 1974. Four M.P.s walked out of the committee in protest at his refusal to widen its scope and thus make abortion law more restrictive. The M.P.s involved, three Conservative and one Labour, were all known opponents of the 1967 Abortion Act.

For lack of a quorum, the committee had to be adjourned and the protest of the four M.P.s thus effectively killed the Bill. The adjournment meant that the Bill could not complete all its stages in one parliamentary session and it was lost with the summer recess.

10. The Lane Committee of Enquiry

The Committee on the Working of the Abortion Act under the chairmanship of Mrs. Justice Lane was set up in June 1971 by Sir Keith Joseph, Conservative Secretary of State for Social Services, in response to increasing calls for an enquiry by, among others, the churches, the medical profession, the press, SPUC, and especially M.P.s, over three hundred of whom signed an Early Day Motion initiated by Norman St. John Stevas. Its terms

of reference were much more restrictive than many opponents of the 1967 Abortion Act would have wished, given that it was not within the committee's brief to examine the principles underlying the Act but only to be concerned with the way the Act was working. The exact terms of reference were:

To review the operation of the Abortion Act 1967 and, on the basis that the conditions for legal abortion contained in paragraphs (a) and (b) of subsection (1) and in sub-sections (2) (3) and (4) of section 1 of the Act remain unaltered, to make recommendations.

The members of the committee were chosen deliberately so that no person of known committed views either for or against the 1967 Act was selected. A majority of the members were women and/or representatives of the medical profession. The committee comprised: two consultant gynaecologists, two general practitioners, two members of the nursing profession, one a nursing sister and the second a Chief Nursing Officer, one doctor who was an NHS area Senior Administrative Officer, one Professor of Psychiatry, one medical social worker, a headmistress, one university lecturer in social administration, a staff manageress with Marks and Spencer Limited, an information officer with the Confederation of British Industry and one Queen's Counsel.

The committee sat for three years, received written and/or oral evidence from over four hundred organisations and individuals and from over one hundred members of the public on their personal experience of abortion. Over two hundred expressions of personal opinion on the principle of abortion were also received. The

committee visited almost thirty hospitals, clinics and Health Boards. Questionnaires were sent to every NHS hospital having a gynaecological department, to all approved places and to what were thought to be the addresses of thirty two referral agencies. Furthermore, various surveys were undertaken; of abortion patients in both hospitals and other approved places; of social workers (including medical social workers) and of foreign women coming to London for abortions. Both committee secretaries visited the United States and compiled information on abortion practices there. Finally, the committee studied numerous books, articles, surveys and opinion polls. Its report (Lane) was published in 1974 in three volumes, running to almost seven hundred pages.¹²⁶

One of the committee's aims was to investigate how far some of the hopes and fears expressed concerning the working of the Act had been realised.¹²⁷ It was recognised that these hopes and fears stem from an ideological controversy concerned primarily with the relief of the suffering of individuals as opposed to the sanctity of life.

Lane concluded that although complications can and do occur, the great majority of therapeutic abortions are performed safely and uneventfully.¹²⁸ Deaths arising from legal abortions were found to have declined for each year following the 1967 Act. When

126. Lane.

127. Ibid. 1, 29.

128. Ibid. 1, 94.

it is recalled that s.1(1)(a) of the 1967 Act requires balancing the risk of death or injury to physical or mental health involved in the pregnancy continuing against that of the pregnancy being terminated, Lane's findings that the fatality risk is lower for abortion performed early in pregnancy, by dilatation and curettage or vacuum aspiration, than it is for continued pregnancy, is important (3.4 per 100,000 operations as opposed to 18 per 100,000 live births). Significantly, Lane did not think that this factor provided sufficient justification to terminate as 'there are other factors involved'.¹²⁹ Taking all methods of abortion together, the mortality rate in the United Kingdom was found to be very much higher than in east European countries where the vast majority of operations were performed before the twelfth week of pregnancy and by vaginal methods unaccompanied, in most cases, by sterilisation.¹³⁰ With regard to risk of morbidity, Lane found that again there was only a small risk of early morbidity and that this was further minimised if abortion is performed early in the pregnancy by a vaginal method and unaccompanied by sterilisation.¹³¹ Late and/or latent morbidity was seen as rather more problematic, however, since there is little satisfactory evidence about long term effects. It was noted that the Wynn Report¹³² omitted

129. Ibid. 1, 118.

130. Ibid.

131. Ibid. 1, 124-129.

132. Wynn Report: op.cit.

to include existing evidence that the incidence of late complications of therapeutic abortion was often no greater than that following childbirth.¹³³

When considering the risk to mental health presented by legal abortion, Lane found that the risk of a serious mental illness or even of any kind of disabling mental disturbance was slight but that a substantial number of women did suffer more or less transiently from feelings of regret, guilt, bereavement and depression. However, it was found difficult to distinguish the effects of the operation itself from the circumstances associated with pregnancy being unwanted and it was stressed that those concerned with the care of abortion patients should avoid showing attitudes toward the patients which were likely to arouse feelings of guilt or resentment.¹³⁴ Where the decision to seek abortion was made jointly by husband and wife which, on the basis of the evidence available to Lane, was the majority of cases, then abortion was not seen to have adverse effects on the marriage. In other cases, that is where the husband did not know of the abortion or where the wife was pressurised by him into having the operation, it was thought that friction was likely to ensue.¹³⁵

The committee also examined the effects to health of legal abortion being refused and concluded that although serious

133. Lane: 1, 140.

134. Ibid. 1, 151.

135. Ibid. 1, 153-158.

psychological illness rarely follows a failure to obtain an abortion, the risks of less serious illness and of unhappiness are substantial.¹³⁶ In particular it was stressed that the consequences of producing an illegitimate child may weigh so heavily upon the mother that they are to be taken into account when assessing the risks to her health.¹³⁷ Lane also rejected the view that the present shortage of babies for adoption was a valid reason for refusing abortion¹³⁸ and noted:

Happily the view formerly held by some people that unmarried women should have to bear their unwanted children as a punishment for becoming pregnant without regard to consequent injury to health has largely disappeared.¹³⁹

In considering with whom the decision to terminate should lie, Lane distinguished two alternatives in both of which distinctions can be drawn: either the decision should be made dependent on the opinion of two doctors, with the further distinction that panels or referees of doctors should be set up either to decide or to hear appeals from refusals to recommend or perform the operation; or the decision should rest with the woman, with the further distinction that this could mean abortion on demand (where the doctors' professional opinion is ignored) or abortion on request (which would involve a right, but subject to a doctor's professional approval and willingness to perform the operation).

136. Ibid. 1, 171.

137. Ibid. 1, 173.

138. Ibid. 1, 166.

139. Ibid. 1, 185.

Lane recognised that, strictly speaking, consideration of the latter was outside its terms of reference but concluded 'nevertheless we should have recommended against abortion solely at the request of the woman even if the matter had been fully open to us'.¹⁴⁰ Its reasons for so concluding were based on the view that the modern conception of medical care involved treating a patient as a whole person viewed in the light of personal, physical and mental health and social conditions and not merely as one suffering from a particular disease or condition requiring amelioration or cure; that to expect doctors to operate under orders without reference to their judgement would be contrary to good medical practice and the interests of their patients; that women would find the burden of decision making a heavy one, possibly leading to feelings of guilt; that women would be more vulnerable to pressure from family and boy friends; that this might lead to neglect of contraception; that public opinion was still against abortion at the woman's request; and that it was likely to inflate the number of abortions and further lead to an unwillingness on the part of many obstetricians and gynaecologists to perform the operation.¹⁴¹

Lane also rejected the proposal for panels or referees of doctors. Its reasons were: that it was difficult to settle how such appointments should be made; that such a system would involve unacceptable delay with consequent increase in death risks; that

140. Ibid. 1, 189.

141. Ibid. 1, 189-192.

there would be unnecessary embarrassment to the woman or arbitrary decision making if the woman's presence was not required; that unwanted pregnancy would be seen in isolation from its associated problems; that the decision of the panel or referees would be final unless an appeal system was set up which would lead to further delay; that such a practice would not lead to greater uniformity of decision making; and that it would interfere with the doctor-patient relationship and with the continuity of patient care.¹⁴²

Finally, Lane rejected the idea that the decision should be made only by consultants as this could lead to fewer abortions being performed without due regard to the terms of the Act and that it would draw invidious comparisons between doctors. This reasoning also led to the rejection of the proposal that there should be an 'approved' list of doctors who could perform abortions outside the NHS.¹⁴³

With regard to the criteria for abortion, Lane, although recognising that to recommend any changes in the terms or principles of the Act would be outwith its brief, examined the way in which the principles are expressed and interpreted. It concluded that the criteria are imprecise and can be widely interpreted but that any change, for example by quantifying degree of risk, would not lead to a better implementation of the intention

142. Ibid. 1, 194-196.

143. Ibid. 1, 197-198.

of Parliament in passing the 1967 Act which was that the criteria be applied and the risks to health weighed in each individual case.¹⁴⁴

The Lane Committee considered some special categories of women seeking abortion¹⁴⁵ and concluded that on the basis of available evidence, girls under sixteen and women over thirty five should be given sympathetic consideration, the former because of their immaturity and the attendant risks to the girl's health; and the latter because of the risks to the woman's health and the risk of bearing a deformed child, both of which are increased with age. Lane was not prepared to limit the number of abortions which could be performed on the same woman but recommended that such women should be regarded as in particular need of counselling on the grounds that 'a woman who is prepared to undergo repeatedly what, to most women, is a distressing experience and one to be avoided in future, may point to some psychological or other problem affecting her health'.¹⁴⁶

The upper time limit (28 weeks) for abortions laid down in the 1967 Act was considered to be too high in view of advances in medical techniques of sustaining premature babies. Accordingly, a twenty four week upper time limit was recommended as according protection for any foetus with a real chance of survival independent of its mother, with the further recommendation

144. Ibid. 1, 199-211.

145. Ibid. 1, 212-273.

146. Ibid. 1, 269.

that any termination carried out after that date to preserve the life or health of the mother or the child should be treated as induction of labour and that every effort should be made to preserve the life of the child.¹⁴⁷

In considering procedure in abortion, Lane recommended that in view of the comparative safety of abortions performed before the 12th week of pregnancy, as far as possible terminations should be carried out before that date although no suggestion was made regarding how best to avoid delay except that arrangements for patients seeking abortion should be kept under review.¹⁴⁸

The Committee was particularly concerned that any woman seeking abortion should have adequate counselling i.e. opportunity for discussion, information, explanation and advice before the decision is taken. Its reasons were twofold: it had evidence of women who felt they were rushed into termination without any discussion of their individual circumstances and also of women refused abortion without adequate consideration of the grounds put forward. The object of counselling was envisaged as ascertaining a woman's real wishes and ensuring that a request for termination was not the result of pressure from other people.¹⁴⁹

Lane also recommended that where a woman of 16 years or over refuses to allow her general practitioner to be informed, her wishes must be respected in order to maintain the traditional doctor-patient relationship.¹⁵⁰

147. Ibid. 1, 274-283.

148. Ibid. 1, 285-287.

149. Ibid. 1, 288-311.

150. Ibid. 1, 312-316.

Lane examined the question of where abortions should be performed, with regard to both the private sector and the NHS. Within the latter, it felt that provision of abortion facilities should not be separated from gynaecological services in general. In forming this opinion, it appears to have been influenced by its conception of changing patterns of the type of medical care practised in that discipline, in that gynaecologists were seen as tending to treat medical and surgical care as equally important.¹⁵¹ There is an apparent contradiction in the report over this point in that the survey of abortion patients undertaken by the Institute for Social Studies in Medical Care for the Lane Committee¹⁵² revealed that abortion patients regarded hospital gynaecologists as both less sympathetic and less helpful than other doctors.¹⁵³ Moreover, Lane took the view that, although the 1967 Abortion Act did not of itself cast upon hospitals or doctors any duty to provide for or perform abortions, the grounds on which abortion was allowed by the 1967 Abortion Act were all for the purpose of saving life or health or of preventing a seriously handicapped child being born and as such fell within section 1(1) of the National Health Service Act 1946 which reads:

It should be the duty of the [Secretary of State] to promote the establishment in England and Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of England and Wales¹⁵⁴ and the prevention, diagnosis and treatment of illness and for that purpose to provide or secure the effective provision of services in accordance with the following provisions of this Act.

151. Ibid. 1, 395.

152. Ibid. Vol. 3.

153. Ibid. 3, 137.

154. The parallel provision for Scotland is found in s.1(1) of the National Health Service (Scotland) Act, 1947, 10 and 11 Geo. VI ch.27. s.3(1) of this Act makes it a duty upon the Secretary of State to provide a level of services sufficient to meet all reasonable requirements.

On this ground there was a duty upon the Secretary of State, under section 3(1)(a)(b) and (c) of the 1946 Act, to provide hospital accommodation, medical, nursing and other services, and the services of specialists to such an extent as he considers necessary to meet all reasonable requirements. In the case of abortion, however, no guidance was given to hospital authorities as to what the Secretary of State deemed necessary to meet reasonable requirements. Accordingly Lane recommended that such guidance should be given as would obviate the risk of patients being forced to seek abortions in the private sector. It was recognised that patients were being forced to do that, with the result that 50 per cent of abortions were performed in the private sector, which state of affairs caused Lane considerable disquiet.¹⁵⁵

Criticisms of the 1967 Act as leading to a fall both in recruitment to obstetrics and gynaecology and to resignations of medical and nursing staff were found to be unwarranted, nor was any evidence found of waiting lists for gynaecological treatment being lengthened as a result of the Abortion Act.¹⁵⁶ However, Lane viewed the increasing proportion of abortions performed in the private sector and the regional variation in rates of women obtaining abortion within the NHS as suggesting that there was an inadequate service provided by the NHS and this the committee thought should be solved by a planned development of comprehensive gynaecological services, including abortion facilities, to meet the

155. *Ibid.* 1, 395-401.

156. *Ibid.* 1, 408-410.

real need.¹⁵⁷ The committee's belief that abortion should remain within mainstream gynaecology was reasserted in its rejection of the suggestion that separate units be established to provide abortion facilities only. Its reasons for rejecting this proposal included: that the majority of medical opinion was against it; that there would be greater probability of stigma attaching both to patients and staff; that confidentiality would be threatened; and that the establishment of a large number of units would be likely to result in a move nearer to abortion on demand.¹⁵⁸

Lane also considered the position of conscientious objection to abortion and, although recognising it as justifiable, recommended that any doctor having such objection should refer any patients seeking abortion to another doctor.¹⁵⁹ The problem was also recognised that conscientious objection may lead to some doctors failing to secure appointments in obstetrics and gynaecology. While expressing sympathy with the position of those few doctors, Lane thought it inevitable that health authorities should prefer those doctors who saw abortion as properly part of clinical gynaecological practice since the attitude of consultant obstetricians is important in determining the level of service provided.¹⁶⁰

The private sector was found to comprise three elements: private nursing homes approved by the Secretaries of State;

157. Ibid. 1, 412-418.

158. Ibid. 1, 419-423.

159. Ibid. 1, 404.

160. Ibid. 1, 425.

supporting services such as referral agencies, some commercial and some charitable in nature; and doctors certifying, operating and notifying abortion other than under an NHS contract. Lane did accept that there had been abuses arising out of the implementation of the 1967 Act. Once it was realised that women were prepared to pay for abortion, commercial entrepreneurs had become involved in the private nursing home sector and that, in order to maintain profits, they had resorted to extensive advertising both in this country and abroad and even to taxi-touting and 'hi-jacking' of patients. However, although these abuses were recognised, so too was the fact that the DHSS had been taking an increasingly active role in stamping out these abuses. Not only was there official examination of the facilities provided but the owners of places seeking approval were now subjected to examination. In addition to visits of inspection prior to approval, the DHSS had undertaken unannounced inspection to ensure the maintenance of required standards which were constantly reviewed and increased as further abuses came to light. Moreover, the DHSS had gone further than this by appointing special investigators with police experience to check upon the assurances given as to the management and administration of approved places.¹⁶¹ The committee was satisfied that administrative procedures were sufficient to control abuses and that no statutory regulation was needed.

The problem of referral agencies was thought more difficult to control, however, in that the 1967 Act did not require their

161. Ibid. 1, 435-437.

licensing or approval. The DHSS had sought assurances from approved places that they would not accept patients from bureaux and agencies involved in touting but such assurances were not felt to be sufficient safeguards. Consequently Lane recommended that all medical referral agencies (i.e. not solely abortion referral agencies) should be subject to licensing by the Secretaries of State and that it should be a criminal offence for any unlicensed person or body other than a registered medical practitioner or dental surgeon to charge or seek to charge any fee for referral to any medical services or for treatment. The committee did not seek to legislate referral services out of existence because it took the view that, properly controlled, they performed a useful service. It further recommended that only those agencies providing medical consultation should be licensed.¹⁶²

The committee considered the criticism that the large numbers of abortions performed on foreign women was scandalous.¹⁶³ It took the view that abortion was part of medical treatment and that doctors considered their first duty to the patient, regardless of nationality or residence. Further, provided the statutory grounds for abortion were satisfied, abortion was perfectly lawful without regard to the residence of the woman. Lane recommended, therefore, that no restrictions should be placed on abortions performed on foreign women and remarked, in passing, that such numbers were likely to fall as other countries reformed their abortion laws.

162. Ibid. 1, 451-456.

163. Ibid. 1, 457-472.

On considering notification procedure and abuses, the committee recommended that a further control on abuses could be achieved by giving authority to Chief Medical Officers to disclose information derived from notifications to the president of the General Medical Council for the purpose of investigating serious professional misconduct.¹⁶⁴

The committee welcomed the provision of day-care facilities for abortion, subject to certain provisions, on the grounds that complication rates had not increased as a result of this provision and that it ensured shorter waiting lists with the added benefit of abortions being performed at an earlier and safer stage of pregnancy. However, such facilities, it was recommended, should only be used before the twelfth week of pregnancy, on patients living locally and returning to the care of a local general practitioner, and only in cases where it was not necessary to use operative techniques or anaesthesia necessitating prolonged recovery. In addition it was advocated that the place in which such facilities were provided should be required to give adequate counselling, contraceptive advice and full follow-up consultant cover, adequate surgical and pathological facilities and sufficient beds to make possible admission of patients when required, and also to allow patients to rest and be assessed before leaving.

In assessing the effects of the Abortion Act 1967 on illegal abortions, the committee noted the difficulty both before and

164. Ibid. 1, 473-478.

after the passage of the Act in putting a figure on the number of illegal abortions. However, on balance, from what statistics were available (i.e. from Hospital In-Patient Enquiry, the London Emergency Bed Service, Registrar-General data on abortion deaths, Confidential Enquiries into Maternal Deaths, specific case studies in different hospitals and prosecutions for illegal abortion) it concluded that:

The 1967 Abortion Act had made a real contribution to the reduction of illegal abortions.¹⁶⁵

Nevertheless, it felt that an unknown number of abortions performed in purported compliance with the Act were, strictly speaking, illegal because of disregard of the criteria of the Act. Furthermore, it was concerned with breaches of the regulations regarding certification and notification and recommended that any such breaches should be triable either summarily or on indictment (the latter would circumvent the possible difficulty of establishing evidence within the time limit applying to summary prosecutions) and that the maximum penalty for any breach should be raised from a fine of £100 to 12 months imprisonment and/or £1,000 fine in order to emphasise the legal requirements more forcefully.¹⁶⁶

In considering the effects of the 1967 Abortion Act, the Lane Committee had regard for the type of society in which it was operating. It noted that the 1960s were a time of

165. Ibid. 1, 509.

166. Ibid. 1, 512-516.

extensive and rapid cultural, social and economic change in which:

... societal expectations of prosperity were rising; sexual mores were changing at a pace which many considered to constitute a sexual revolution; and relationships between medicine, the law and the public ... were altering in an atmosphere of increased critical scrutiny and questioning.¹⁶⁷

It perceived the quality of life as having changed and considered that expectations and standards had so changed that conditions thought tolerable twenty years previously were no longer so thought. Women were viewed as being more independent, no longer prepared to accept pregnancy after pregnancy and the availability of contraception was seen as fostering that attitude. Furthermore it was recognised that for many women, a career was more important than exclusive devotion to raising a family. Economic views were also seen as influencing contemporary society's views about child-bearing and it was recognised that many women now worked in order to raise the living standards of their families.¹⁶⁸

The committee concluded that:

... by facilitating a greatly increased number of abortions, the Act has relieved a vast amount of individual suffering.¹⁶⁹

and was:

... unanimous in supporting the Act and its provisions. We have no doubt that the gains facilitated by the Act have much outweighed any disadvantages for which it has been criticised.¹⁷⁰

167. Ibid. 1, 16.

168. Ibid. 1, 17.

169. Ibid. 1, 600.

170. Ibid. 1, 605.

The Committee further recognised that the content of its report was not likely to find favour with:

... those who see the Act and its workings as evidence of a serious and progressive decline in the standards¹⁷¹ of morality in sexual behaviour of this society.

but had come to the conclusion that the 1967 Act cannot:

... be interpreted, or should be used, in a punitive way in an attempt to improve this society's morals and to diminish sexual misbehaviour.¹⁷²

From an examination of Lane's findings it can be seen that SPUC's views were not upheld by the Committee of Enquiry. SPUC had stressed that abortion was a dangerous operation; that it should be performed only when there was grave or serious risk to life or health; that the decision should be made by two doctors at least one of whom was a consultant gynaecologist; that there would be increased waiting lists for gynaecological operations; that gynaecologists opposed to the 1967 Act would have poor career prospects; and that abuses stemming from the implementation of the 1967 Act would only be avoided by a 'consultant gynaecologist clause' or by having panels of referees drawn from the medical profession and approved for the purpose by the relevant Ministry. However, only SPUC's stress upon the need for abortion counselling was upheld by the Lane Committee.

Similarly the position adopted by the RCOG received only partial support in that Lane did recommend a restriction of the

171. Ibid. 1, 608.

172. Ibid. 1, 609.

time limit in which legal abortions could be performed (a view which had also been presented by the BMA). However, Lane did not support a 'consultant clause' nor a residency clause for foreign women which had been suggested by the RCOG. The RCOP had made a positive recommendation for special NHS abortion units (as had the BMA and ALRA and as was suggested as a possibility by the RCOG) but Lane disagreed. All these organisations had recommended that better NHS facilities should be provided, in which Lane concurred. ALRA's view that the 1967 Act was working well was upheld by Lane as was their proposed solution to the 'abuses' of the Act viz. the introduction of new administrative procedures by the DHSS. The Church of England's recommendation that the abuses stemming from private abortion clinics be controlled by a system of licensing and prohibiting the charging of fees was also adopted by Lane.

On balance, the findings of the Lane Committee supported to a greater extent the arguments advanced by ALRA over the years rather than those of any other body:

- a. that abortion was not a particularly dangerous operation.
 - b. that the criteria for therapeutic abortion should not be couched in terms of 'grave and serious' risk to life or health.
 - c. that neither a 'consultant gynaecologist clause' nor a system of panels of referees would halt abuses.
 - d. that abuses could be best controlled by administrative action.
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- e. that abortions are better performed early in pregnancy and especially within the first twelve weeks when day-care facilities could be used to a large extent.
- f. that better NHS facilities were required to avoid abuses and regional variation in abortion rates.
- g. that the ~~legalisation~~ legalisation of therapeutic abortion did not lead to lengthy NHS waiting lists nor adversely affect the career prospects of gynaecologists who had conscientious objections to abortion.

The only points on which the Lane Committee's recommendations entailed rejection of ALRA's view were those concerning the need for special NHS abortion units and reduction of the time limit within which it should be lawful to undertake therapeutic abortion.

11. Conclusion

To sum up, this was a period of continued controversy. There now existed two principal pressure groups whose raison d'être was the abortion issue: however their roles were reversed; ALRA now fought a defensive campaign and SPUC the offensive one. Although the general climate of opinion appeared to support the 1967 Act in principle, that support was by no means overwhelming

or indeed stable. There was however almost total agreement that the effects of the implementation of the 1967 Act constituted a new social problem although this agreement did not extend to the measures of its eradication. This generalised concern led to the establishment of the Lane Committee which reported very favourably towards the 1967 Act and disproved many of the allegations which had been made. In Parliament, the outcome of the attempts to amend the law was again governed by the rules of parliamentary procedure and tactics.

CHAPTER FIVE

FURTHER POLARISATION AND POLITICISATION (1975-77)

1. Introduction

Between 1975 and 1977 the abortion controversy was both intensified and altered in nature. The vigorous activities of the two principal pressure groups were largely responsible for considerable parliamentary time being devoted to further attempts to amend the Abortion Act 1967. At the same time the issue became much more politically important; public opinion was both aroused and harnessed, and M.P.s were made fully aware of the potential political implications of their stand on the issue. This chapter will examine these changes in polarisation of both organised and public opinion and their effect on parliamentary activity by firstly analysing the groups' definitions, solutions and tactics and secondly relating these to the attempts at legislative reform. This method thus retains the continuity of approach adopted in earlier chapters.

2. ALRA

(i) Position at the beginning of 1975

The publication of the Lane Report was regarded by ALRA as a vindication of all it had fought for since its formation and as a justification of all it had said in the six years since the Act came into operation. The report was greeted as an authoritative statement which conclusively disproved most of 'the

myths that have grown up around this emotive subject'.¹

Nevertheless, it was criticised on two counts; firstly for its recommendation of a reduction of the upper time limit for legal abortion from 28 weeks to 24 weeks, and secondly for being too timid in its overall recommendations. The evidence in the report was interpreted as pointing to both the need for and the desirability of abortions being freely available to all women who desire them up to the 12th week of pregnancy, yet the report failed to draw such a conclusion. It is actually doubtful whether such a conclusion was open to the committee given its terms of reference, which did not include consideration of the criteria on which abortion may be performed nor criticism of that criteria. Yet such a criticism was perhaps an indication of the way in which ALRA was planning to direct its activities in the coming years.

With the publication of the Lane Report, which quite clearly supported the working of the 1967 Abortion Act, ALRA reappraised its activities and future direction. Between 1970 and 1974, Diane Munday had increasingly run ALRA almost single-handed while the other members of the 1960s 'old guard' had extended their interests and activities to other concerns. Consequently one of the most effective pressure groups in the United Kingdom comprised one full-time activist who had built up considerable knowledge over the years on all aspects of abortion.

Although many ALRA supporters had felt in 1967 that the provisions of Steel's Bill were not sufficiently extensive, the

1. ALRA Press Release, 3 April 1974.

organisation had not then publicly supported an 'abortion on request' campaign. It thought it would be injudicious on the ground that it would be politically unwise to move to a more contentious position so soon after the passage of an Act which was the result of a campaign based on middle-of-the-road arguments. The setting up of the Lane Committee had postponed any decisive move but now ALRA had to decide what line to take on this matter. In effect, this required Diane Munday's commitment to a more assertive position. This, it can perhaps be surmised, was not forthcoming for her resignation was announced on 21 June 1974; the official reason being that the Lane Report had vindicated ALRA's view that the 1967 Act was working well and that she was overworked and had urgent family commitments. Her resignation precipitated an internal crisis for the organisation lacked both active full-time personnel and clear direction in its aims and activities. Its affairs were placed in the hands of three members, Alastair Service, Madeleine Simms and David Flint, and all work of the association was put in abeyance for six months whilst possibilities for future activity were explored and some firm decision taken.²

This crisis was seized upon by those who thought the time was right for ALRA once more to adopt an offensive rather than a defensive role. In the six months interim period, those individuals known to be committed to abortion on request (mainly people active in the Women's Movement) were contacted with a

2. ALRA Minutes of AGM, 28 June 1974.

view to revitalising ALRA. The need for new personnel and ideas was recognised by many of those most closely identified with the reform movement of the 1960s. Vera Houghton, for example, thought that unless ALRA could produce a rebellious element every decade it was in danger of dying on its feet.³ She thought the time had come to build on to the existing structure rather than allow a situation to develop such as had existed in the early 1960s when a 'palace revolution' had been necessary to reinvigorate ALRA.⁴ Moreover, SPUC had sustained a very active campaign since the passage of the 1967 Abortion Act and was unlikely to halt its activities in view of its reaction to the Lane Report. There was also a political advantage in having new names associated with the change of aims. The 1960s reformers had concealed the 'abortion on request' ideal and it was judged inexpedient for them now to campaign publicly for a cause they had denied was their object.

(ii) The new personnel

The new executive committee announced in January 1975 were all women in their twenties and thirties, and all were active in the Women's Movement. Jane Barker had worked for BCC and was then working with King's Community Health Council; Berry Beaumont was a doctor specialising in community medicine; Carol Blaymire was Press and Public Relations Officer for the National Federation of Women's Institutes, a national executive committee member of the Fawcett Society and member of the UN Status of Women Working Group;

3. Interview with Vera Houghton.

4. See Hindell, K. and Simms, M.: Abortion Law Reformed op.cit., p.112.

Caragh Fiddian was an SRN; Fran McLean was a counsellor with the London Pregnancy Advisory Service; Jan Murray had formerly worked for the Brook Advisory Centre before becoming a law student; Eileen Meredith was a member of NCCL, an executive member of the Haldane Society and a trustee of Release and had helped set up a rape crisis centre in London. The new campaign, called A Woman's Right to Choose (AWRTC) was supported by the NCCL who provided office space and facilities and were represented on ALRA by Teresa Woodcraft, who worked in a community advice centre, and Tess Gill, a solicitor and co-author of a book on women's rights.⁵ The campaign organiser appointed was Sally Hesmondhalgh, a journalist who had formerly worked for the TUC. Later she was joined by Judy Cottam, a translator and market researcher.

It is significant, however, that since 1975 ALRA has not been associated with any individuals for the new personnel wanted to build a rather different movement, one which would become a grass-roots movement rather than a small, highly organised, traditional pressure group run by a few individuals. Indeed since the end of 1977 there has at times been no full or even part-time campaign organiser, partly from lack of funds, with the work of ALRA being undertaken by all members of the executive committee working on an evening rota system and by any volunteers.

5. Coote, A. and Gill, T.: Women's Rights: A Practical Guide, Penguin, Harmondsworth, 1974.

(iii) Definition of the social problem

ALRA sees abortion as a comparatively simple operation with few attendant risks if carried out in hygienic conditions by qualified people. Legal abortion within the first three months of pregnancy is regarded as being much safer than childbirth.

It is possible to prove that all abortions taking place within the first twelve weeks of pregnancy can be justified, because the risk of sterility, infection and other complications attached to abortion during this period is less than the risk attached to childbirth ... childbirth is always a greater risk than early abortion.⁶

It does stress however that backstreet abortions are dangerous. Abortion is not presented as an alternative to contraception but as a necessary back-up facility. Stress has been laid on the view that women who use contraception can still become pregnant and that there are women who cannot use the most reliable methods of contraception. Abortion is seen as a remedy for failed contraception and failed contraceptive advice and thereby the lesser of two evils.⁷

What distinguishes the new ALRA's definition of abortion as a social problem is its public acknowledgement that it is primarily a woman's problem. The early founders of ALRA were of the view that readily available legal abortion would be 'the

6. ALRA leaflet: Why we must fight the Abortion (Amendment) Bill, p.3.

7. See AWRTC leaflet: Abortion: Have you ever used a contraceptive that failed?

key to a new world for women'⁸ but, for tactical reasons, stressed the public health aspects of abortion to a greater degree. These same tactical considerations determined the line pursued by the 1960s reformers. Now, however, this definition becomes the predominant one on which the campaign for a 'Woman's Right to Choose' (AWRTC) is based.⁹ It is stated that:

... unless abortion fills the gap where contraception fails, women will never be able to plan their lives and careers ... The right to plan when and if to have children is inseparably linked with the right to equal job opportunities, equal training and the chance to live an equally full life.¹⁰

(iv) Stereotype of the deviant

Whilst not abandoning the presentation of 'hard cases' as those women who seek abortion, ALRA has included all women as possible abortion patients, given failed contraception.¹¹ It is asserted that those seeking abortion are ordinary women, drawn from no particular segment of society, for whom contraception has failed and who have taken a decision that, for them, to bear a child or another child, would be too demanding on their personal health, economic or family circumstances.

Those people whose behaviour ALRA does condemn are local health authorities who are thought to have done little to ensure

8. Stella Browne - see chapter 2 supra.

9. Interview with Sally Hesmondhalgh.

10. ALRA leaflet: Why we must fight the Abortion (Amendment) Bill, p.9.

11. See ALRA leaflet: Five case histories of women who failed to get an NHS abortion or who were never referred to the NHS.

adequate provision of abortion facilities, far less outpatient clinics which ALRA sees as providing a solution to the low rate of NHS abortions performed. These inadequate facilities lead to lengthy delays experienced by women seeking an NHS abortion, with attendant risk to health, both because of the delay itself and the prevalence of less safe methods of carrying out the operation. ALRA also objects to the behaviour of doctors whose refusals to recommend abortion are represented as stemming from their moral, rather than their medical, judgement of the patient. Where such doctors exist (it is judged that areas having low levels of NHS abortions are an indicator of this) special abortion units are required, it is thought, but, more importantly, in ALRA's view, legislation is required which will grant women rights to abortion rather than enable doctors to form judgements which it thinks are more likely to be moral than medical in nature.

(v) Motivation

Underlying the involvement of the new generation of reformers, humanitarianism, moral indignation and symbolism are to be found. Boredom can be dismissed as a motivating factor for all the key members have full-time occupations. Self-interest, too, is only apparent in the sense that all are women of childbearing age.

Humanitarianism covers several aspects. Firstly, there is a desire to eliminate all back street abortions. There is a

concern for women who have to deal with doctors described as being unsympathetic and even punitive and who, because they are granted no rights of decision, then have to 'shop around' for a sympathetic doctor with the risk that they may fail to find one. This concern is intensified by the wide regional variations in the number of abortions performed within the NHS. There is also a humanitarian concern for many who do succeed in obtaining an NHS abortion as many of those are carried out at a later stage in the pregnancy and using methods carrying considerably more risk than those performed in the private sector. The situation of one law for the rich and another for the poor, it is claimed, still exists:

... in some areas doctors refuse on grounds of moral or religious objection. In this situation women may face long delays in obtaining an abortion or, because it is too late, or they do not have enough money for a private abortion, they may have to have the child. About half the women applying for NHS abortions are turned down, but anyone who can pay is likely¹² to face very little delay in obtaining an abortion.

The concern expressed, however, is to secure recognition of individual choice by the woman as to whether or not she bears a child. It does not wish 'compulsory' abortion but a genuine choice between having an abortion and bearing a child:

Let us be quite specific about this - when we say that we wish to have control over our own lives, we are saying that we have no wish to control or dominate others.¹³

12. ALRA Press Release, 2 January 1975.

13. Woodcraft, T.: The Ethics of Abortion. In: Proceedings of a Conference on Abortion Rights and Community Health Care, ALRA Private Papers, (uncatalogued).

In order to provide that genuine choice ALRA wants improvements in State assistance to mothers through both increased family allowances and encouraging local authorities to provide housing for mothers.¹⁴

Given these humanitarian concerns, there is a sense of indignation over the existence of these perceived social problems. In particular, there is indignation over the degree of control doctors exercise over women's bodies, a control thought to derive not from their technical expertise but from the power, authority and status they, as a professional group, have built up and do not wish to have questioned. Judgements on abortion are seen to be not merely medical diagnoses but often primarily moral appraisals and there is indignation that doctors can and do impose their own moral judgements on women.¹⁵

This indignation is linked to the view of abortion legislation as being symbolic of the role and status of women in society. Significantly the campaign for AWRTC was launched on the second day of International Women's Year with the statement:

The Association believes that until women can control their own fertility they cannot attain true social and economic equality.¹⁶

The importance of women's status is stressed by all ALRA's executive and runs through all their literature. The indignation

14. ALRA Press Release, 2 January 1975.

15. Interview with Berry Beaumont.

16. ALRA Press Release, 2 January 1975.

expressed over the perceived subordinate role of women is clearly evident:

We believe in freedom and freedom involves choice, they are inextricably linked. Because we believe that women must define who they are, we fervently believe that a woman in 1976 cannot, if she does not choose for herself, be seen as anything more than the bearer of children. She must not be ruled by her biology. We¹⁷ have been tyrannised by our biology for far too long.

An editorial in the movement's newsletter, which is called, significantly, Breaking Chains, puts the same point:

Abortion must be the key to a new world for women, not a bulwark for things as they are, economically or biologically. Abortion should not be the prerequisite of the legal wife only nor merely a last remedy against illegitimacy. It should be available for any woman without insolent inquisitions, nor ruinous financial charges, nor tangles of red tape. For our bodies are our own. So said Stella Browne in 1935 ... Forty years later we still have not achieved the freedom she spoke of. We are still subject to insolent inquisitions, ruinous financial charges and tangles of red tape and we are still fighting for the right to treat our bodies as our own. It is regrettable that ALRA still exists in this era of supposed enlightenment¹⁸ but exist we still do and fight on we still must.

Such concerns have given rise to demonstration slogans as:

Not the Church, not the State, Women must decide their fate.

(vi) Aims

From 1975 there is for the first time in ALRA's history an explicit and publicly acknowledged connection between its

17. Woodcraft, T.: op.cit.

18. Breaking Chains: ALRA Newsletter, May 1977.

formal aims and its underlying objectives. The aims of the AWRTC campaign announced in January 1975 were:¹⁹

1. To campaign for every woman to have the right to control her own fertility through contraception, and, if she becomes pregnant, to end or continue her pregnancy as she wishes. Therefore, the campaign calls for the following:

- a. a legal right to medical abortion in the first twelve weeks of pregnancy;
- b. unacceptable risk to a woman's health to be the only grounds for refusal of abortion after twelve weeks of pregnancy.

No person should be ~~under~~ any duty to participate in any treatment to which he or she has conscientious objection.

2. In support of the primary aims, the campaign will press for the provision throughout the United Kingdom of:

- a. free and comprehensive facilities for abortion, staffed by sympathetic members of the medical professions;
- b. NHS facilities for outpatient abortion during the first trimester of pregnancy;
- c. free, easily available pregnancy-testing facilities;
- d. an unbiased NHS abortion counselling service to enable women to reach an informed decision and to obtain contraceptive advice;
- e. free and readily available contraception and sterilisation.

19. ALRA: AWRTC, Statement of Aims.

3. The campaign will urge public recognition of a woman's right to abortion and contraception and will, in particular, inform the public and Parliament on all aspects of abortion.

4. So that women who become pregnant without wishing to may have a genuine choice between abortion and motherhood, the campaign will press for improved State assistance to mothers, through better family allowances and through encouraging local authorities to provide housing for mothers.

Although these formal demands are for the first time linked explicitly with the underlying concern that abortion should be the woman's choice, it appears that ALRA was already thinking towards a wider view. Tess Gill is on record as stating that she would like to see abortion totally decriminalised:

What we are really thinking is, why should abortion be a crime? Why should it not be the same as obtaining contraception or having one's appendix out or having a baby? Why should women be made to feel that it is a crime to choose to terminate a pregnancy? ... do we want to restrict the carrying out of abortion to doctors? There are no laws restricting other medical operations to doctors. We do not ask laymen to take out an appendix because it is free and safe to have this done in a hospital ... So to summarise our proposals, we would like to repeal all laws which make abortion a crime and that would be the 1861 Offences Against the Person Act, the two Sections 58 and 59, and the Abortion Act 1967 as well. We would like the retention of the Infant Life Preservation Act with the substitution of 24 weeks for 28. We would like ... and this is perhaps the most important point - to lay a duty on the Secretary of State to provide facilities for NHS abortion.²⁰

By 1977, ALRA had moved much further towards that position than its

20. Gill, T.: Abortion and the Law. In: Proceedings of a Conference on Abortion Rights and Community Health Care, ALRA Private Papers, (uncatalogued).

declared aims of 1975 did. In that year it announced a more extreme draft Bill which may nevertheless have been a tactic to allow for later compromise. The Bill announced in 1977²¹ went a large way to encompass the ideal position described by Tess Gill, by allowing abortion on request to a qualified person whether doctor or SRN, subject to the provisions of the Infant Life Preservation Act 1929 and by laying a duty upon the Secretary of State to provide adequate facilities and personnel. It further decreed, however, that any abortion performed or procured by an unqualified person would constitute an assault regardless of consent. Finally it sought to extend the availability of legal abortion to Northern Ireland.

(vii) Characterisation and tactics

The AWRTC campaign marked the final demise of the old ALRA, the tightly knit, élitist group concentrating almost exclusively on the legislature within which it had established contacts built up over a course of time. The new campaign had to postpone all active attempts to promote its own aims, (although it did produce a draft Bill) and instead try to protect the existence of an Act which it had had no part in promoting and which many saw as being inadequate in providing for the perceived needs of women. The new group lacked any experienced personnel, either in the day-to-day administration of

21. ALRA Model Abortion Bill: New Humanist, Jan/Feb 1977.
For full text see Appendix II.

the pressure group or, equally importantly, the operations of Parliament. As Paul Ferris noted:

Now it's the turn of the anti-abortionists to be politically devious. ALRA itself has been taken over by radical young feminists who chose last month to launch a campaign for abortion on request. The reformists are no longer a highly organised lobby with long experience of handling M.P.s. The best organised lobby is now SPUC and its associates. They have bided their time, as politicians grew more uneasy about reported abuses that the Department of Health seemed unable to stop. Now they are suddenly gaining results, and the reformers have spent the past week feverishly regrouping.²²

Within the new group there was no organised division of labour, it lacked an experienced lobbyist within Parliament and had no specialist committees. Decisions, as in SPUC's early days, appeared to be made by whoever was available when the need arose. It was perhaps inadvisable to launch a new and more far-reaching campaign when a major attempt to amend the Abortion Act 1967 was about to be made in Parliament. Just as SPUC had been surprised by the second reading of Steel's Bill so was ALRA by the James White Bill:

We did not think²³ that the White Bill would pass a second reading.

The new group wanted a different type of movement from the old ALRA, a grass-roots campaign rather than a highly technical lobbying organisation and one which would involve women in asserting themselves to secure their rights, rather than an élitist group securing rights for them. Apart from the obvious wish for women to be more self-assertive and to assume

22. Ferris, P.: Putting the clock back on abortion, The Observer, 16 February 1975.

23. Interview with Sally Hesmondhalgh.

a greater control over their own lives, it was judged that a grass roots campaign was politically necessary both in the long and the short term. In the short term, it was thought necessary to combat SPUC's pressure on individual M.P.s which had reached proportions such that a small lobbying group could not hope to counter effectively. But in the long term it was thought that abortion on request was likely to prove a long campaign and would require raising the public's consciousness of the issue before any attempts at legislation could be made in Parliament.

ALRA wished to take the issue to the grass roots, not to build a mass ALRA movement but a mass generalised movement seeking abortion on request. To that end, it sought to work with existing local groups and not only those which had always supported ALRA (the CWG, BCC, etc.). ALRA tried to politicise the issue by lobbying for the support of powerful political groups; trades councils, the TUC and political parties. In addition to the traditional methods of letter writing to the press and M.P.s, proposing resolutions at conferences, it encouraged picketing local health authorities and factories, sit-ins, theatre workshops, demonstrations and having questions raised at local council meetings as well as extending pressure on Hospital Management Committees.²⁴ This new approach appears to be succeeding for many organisations have

24. See Action Guide, ALRA /AWRTC Publication and 'Why we must fight the Abortion (Amendment) Bill', ALRA Publication.

passed resolutions supporting abortion on request,²⁵ most importantly, the TUC Women's Conference (1975) which was followed by the TUC conference itself and the overwhelming vote of the Labour Party Conference in 1977 in favour of free abortion on request, adequate NHS facilities, and resistance to any attempts to restrict the 1967 Abortion Act (4,666,000 in favour, 73,000 against).

ALRA still had also to concentrate its activities on Parliament where there have been two major attempts to amend the Abortion Act 1967; the first introduced by James White and the second by William Benyon, Labour and Conservative M.P.s respectively. It is in Parliament that ALRA has been least effective, particularly with regard to the James White Bill. They were very slow to organise and the new organisation still lacks the kind of detailed follow up and concerted effort which characterised ALRA in the 1960s. ALRA initially worked mainly through various branches of the Women's Movement, in particular the Women's Abortion and Contraception Campaign (WACC) and the National Abortion Campaign (NAC), which was founded in March 1975. The Women's Movement has rarely been sympathetically portrayed by the mass media and within ALRA there is a recognition that if an unfavourable image is presented:

They [the press] depict us as irresponsible, hysterical, emotional screaming radical feminists²⁶

this is unlikely to advance their cause in Parliament. Certainly the behaviour of some alleged NAC supporters in the House of

25. For a full list, see Action Guide, op.cit.

26. Interview with Sally Hesmondhalgh.

Commons is unlikely to convince the majority of M.P.s otherwise, as the following report perhaps indicates:

Three women, believed to be members of the National Abortion Campaign, were detained in the House of Commons after two separate incidents. In the first incident, a woman rushed to the railings at the edge of the public gallery and shouted down to M.P.s: "Who the hell do you think you are?". In the second incident, two women jumped from the Strangers' Gallery to the special gallery below and tried to handcuff themselves to the railings.²⁷

Furthermore NAC risked having an action brought against it for contempt of the House by refusing to give evidence to the Select Committee on the Abortion (Amendment) Bill as it felt it would:

... serve no purpose at all to talk to M.P.s who are already poised to restrict the existing abortion legislation.²⁸

Although NAC was cleared by the Committee of Privileges of all charges of contempt,²⁹ it obviously does not help its cause to be seen not to play the 'rules of the game'.

3. Other groups supporting ALRA

After 1975 several organisations were formed to defend the Abortion Act 1967 or to advocate abortion on request. These included Christians for Free Choice, Labour Abortion Rights Campaign, Tories for Free Choice and Doctors for a Woman's Choice on Abortion. In March 1976 a Co-ordinating Committee in Defence

27. The Times, 10 February 1976.

28. The Guardian, 2 March 1976.

29. The Times, 25 March 1976.

of the 1967 Act was set up (Co-ord), its instigators being former ALRA personnel, Vera Houghton, Alastair Service and Madeleine Simms. Whether it was thought that ALRA/AWRTC was failing to have any significant impact on Parliament through a lack of awareness of the intricacies of political processes and/or that NAC, WACC and the Women's Movement in general would not be seen as sufficiently representative of public opinion, or a combination of both, is speculation. Whatever the reasons for its formation, this group once again provided a highly sophisticated political lobbying machine producing detailed briefing to M.P.s in general and standing committee members in particular, with established links with government departments. Co-ord started with sixteen founding organisations, including ALRA and NAC, and within a few months that number had doubled (and has continued to increase). The committee has the advantage of embracing many different types of organisation including 'respectable' middle-of-the-road groups,³⁰ and a wide variety of national and specialist organisations. A

30. By August 1976 organisations belonging to the Co-ordinating Committee were: ALRA, BCC, Birth Control Trust, BHA, BPAS, Brook Advisory Services, Child Poverty Action Group, Christians for Free Choice, Co-operative Women's Guild, Doctors and Overpopulation Group, Doctors for a Woman's Choice on Abortion, Family Planning Association, Federation of Conservative Students, Labour Abortion Rights Campaign, London Youth Advisory Service, Marie Stopes House, Medical Practitioners Union, NAC, National Association of Family Planning Doctors, National Association of Probation Officers, National Association of Young People's Counselling and Advisory Services, National Council for Civil Liberties, National Joint Committee of Working Women's Organisations, National Labour Women's Advisory Committee, National League of Young Liberals, National Organisation of Labour Students, National Secular Society, National Union of Journalists Equality Working Party, National Union of School Students, NUS, National Union of Townswomen's Guilds, Northern Ireland ALRA, PAS, Rationalist Press Association, Release, Six-Point Group, Socialist Medical Association, Tories for Free Choice, Ulster PAS, Union of Liberal Students, WACC, Women in Media and the Young Communist League.

panel has been established of consultant gynaecologists, general practitioners and representatives of other professions. The committee takes as its stance one of the main conclusions of the Lane Committee that the gains facilitated by the Abortion Act 1967 have much outweighed any disadvantages. It believes:

If Parliament really cares what happens to women who wish to terminate unwanted pregnancies, it will stop considering restrictive measures like James White's and William Benyon's Abortion (Amendment) Bill and will start considering the needs of women and how to meet them. Instead of narrowing the operation of the law,³¹ the authorities should be widening it.

4. SPUC

(i) Position at the beginning of 1975

SPUC had originally welcomed the establishment of the Lane Committee:

The Society for the Protection of Unborn Children was the first to fight for an independent inquiry into the Abortion Act ... Now at last, after four years, a proper official inquiry has been set up, to be headed by Mrs. Justice Lane, Britain's first woman High Court Judge. It is a victory - particularly as we have urged from the outset that the Chairman of such a Commission should be an eminent lawyer, somebody well versed in sifting evidence.³²

On the publication of the report, however, SPUC's reaction was rather different. Lane was called:

31. Co-ordinating Committee in Defence of the 1967 Abortion Act, New Humanist, May/august 1976.

32. SPUC Bulletin No.7.

One of the greatest whitewashes in the history of Government inquiries. It saw what it wanted to see, ignored what it wanted to ignore and has argued what it wanted to argue.³³

The report's factual findings were rejected on the grounds that the committee 'did not review the evidence in the spirit of independent inquiry' and that the 'committee was biased in favour of a liberal abortion policy from the start'.³⁴ Instead the findings of the Wynn Report³⁵ are regarded as more authoritative than Lane:

I personally accept Wynn's findings on this. They are as authoritative if not more authoritative than Lane.³⁶

Evidence of bias, it is claimed, lies in the view that:

The Committee was tied to the apron strings of the Department of Health.³⁷

and that:

The evidence is their conclusions. We could have appointed a committee which would have come to quite different conclusions.³⁸

Nevertheless, SPUC's formal submission to the DHSS on its response to Lane's findings was a much more careful and reasoned document. Dr. C.B. Goodhart, a Cambridge Zoologist

33. SPUC Bulletin No. 14.

34. Nicholas Fogg interviewed by The Sunday Times, 11 August 1974.

35. Wynn, M. and Wynn, A.: op.cit.

36. Fogg, N.: op.cit.

37. Ibid.

38. Ibid.

and SPUC executive committee member, who drafted SPUC's original evidence to the Lane Committee and helped draft the organisation's comments on the report itself, has said that he challenges Lane's facts only on 'minor and possibly nit-picking things'³⁹ and specifically rejects SPUC's oft publicised view that abortion is riskier to a woman's life than normal pregnancy:

I would not go along with that. It is not⁴⁰ true. The death rate from abortions is so very low.

Goodhart's main criticism of Lane was that 'the Act is being abused, in that abortion is available on demand - which Parliament never intended'.⁴¹

(ii) Characterisation

During this period, SPUC's major personnel changed slightly. Phyllis Bowman became its most public figure in her new role as director of the organisation. Elspeth Rhys-Williams ceased to be involved in its day-to-day management and instead devoted her time to a new anti-abortion organisation which she helped to found, the International Pro-Life Information Centre. Her place as administrative secretary was taken by Jennifer Murray who had previously been involved in SPUC in a more minor capacity. John Smeaton, formerly a teacher, became a full-time worker for the organisation. These changes in personnel, however, did not presage any change in SPUC's

39. Goodhart, C.B. quoted in The Sunday Times, 11 August 1974.

40. Goodhart, C.B.: Ibid.

41. Ibid.

nature; its definition of the social problem, its stereotype of the deviant and the motivation of its members remained unaltered.

(iii) Tactics

After 1975 the argument, which had always been stressed by SPUC, that Parliament's intentions of 1967 were being flouted began to be effective in Parliament itself. The tactic employed was to use the arguments presented by ALRA prior to the passage of the 1967 Act and expose their weaknesses in view of what happened thereafter. This is exemplified by SPUC answering reformers' fears of a population explosion by pointing to the declining birth rate in the 1970s. Similarly, the pro-reformers had consistently argued that abortion was a necessary evil to deal with 'hard' or marginal cases only; M.P.s had been assured that abortion on demand would not result from a measure designed to cater for such marginal groups. To counter this SPUC cited Professor Peter Huntingford, a consultant gynaecologist and strong supporter of ALRA, as an example of a doctor permitting abortion on demand. In an article headed Professor permits abortions on demand, Huntingford said:

I have no qualms about this at all and I am quite certain that it does not contravene the Abortion Act ... the Act allowed abortion when the risk of permitting the pregnancy to continue was greater than the risk of abortion ... The simple fact is that when an abortion is carried out in the first twelve weeks of pregnancy it is safer than allowing the pregnancy to go to term.⁴²

42. The Daily Telegraph, 21 July 1971.

SPUC's aim is ultimately the repeal of the Abortion Act 1967 but between 1975 and 1977 there was evident in SPUC a willingness to compromise its long term goal for shorter term aims. This compromise would only be made, however, in the case of legislation not solely controlling abuses but seriously altering the grounds on which abortions can be performed, so that the relevant criteria would be purely medical rather than socio-medical. This, it was claimed, would have the effect of reducing the number of abortions performed by between 60,000 and 70,000 each year.⁴³ SPUC believes that they are fighting:

... a small but evil and exceptionally vociferous minority [who] have taken control of some sections of our administrative system. By their actions they show themselves determined to corrupt the young and to undermine the family - the cornerstone of our society ... we know that some leading pro-abortionists are obsessed with the idea of spreading the erosion further. Time and again one sees the same people in the unrelenting fight to legalise sexual intercourse with children, to legalise incest, to legalise euthanasia.⁴⁴

SPUC's organisation has become much more sophisticated. A nationwide network of groups was established; shifts in parliamentary opinion were carefully monitored by lobbying and letter-writing; a special political committee was set up to build up and brief parliamentary committees; demonstrations were held to show the strength of support for their cause; M.P.s were circulated with SPUC literature and with copies of sections of Babies for Burning;⁴⁵ the issue of abortion was

43. See The Times, 6 February 1975.

44. SPUC Letter to members 'Defend the Family'.

45. Litchfield, M. and Kentish, S.: op.cit.

kept alive in Parliament by parliamentary questions and early day motions. SPUC aimed to develop abortion into an election issue by exerting constituency pressure upon M.P.s, by withholding votes from pro-abortion M.P.s, and by trying to have politically active members on selection committees for parliamentary candidates:

- a. canvass for the candidate most sympathetic to our views.
- b. ensure everything possible is done to bring home the importance of voting for the candidate most strongly on our side to local organisations as well as in churches and to neighbours. Use every means possible to ensure our candidates are given maximum support.
- c. Even if you have an M.P. in a 'safe seat' locally still do all you can to assist the anti-abortion candidate. Votes count and if you can undermine the number of votes given to the pro-abortionist, this will have effect.⁴⁶

The Roman Catholic Church has aided SPUC in maintaining considerable constituency pressure and in organising demonstrations,⁴⁷ for example the Bishop of Nottingham reminds his parish when 'writing-to-M.P.-time' has come round once more.⁴⁸

It is noteworthy however that attempts to influence the official policy of the TUC and major political parties, a new tactic for SPUC and one which proved successful for ALRA, failed. Nevertheless, SPUC's success in politicising abortion at

46. SPUC letter to members 'Defend the Family'.

47. For an analysis of Roman Catholic involvement based on quotations from newspapers, see article by Diane Munday, *New Humanist*, December 1976.

48. *Nottingham Evening Post*, 6 February 1977.

constituency level has been recognised; The Glasgow Herald said that abortion was:

... a political hot potato which could threaten the Labour stronghold in the West of Scotland, Liverpool, Birmingham and Manchester ... Now if Mr. Callaghan didn't realise it before, Mr. George Crozier of the Scottish Catholic Lay Apostolate has pointed out forcibly that Labour could lose more than a million votes because of the party conference vote ...

The Government is in an appalling dilemma. On the one hand, party conference by its substantial vote commands serious consideration for easier abortion to be written into Labour's election manifesto. On the other hand, panic stricken Labour M.P.s who depend on the Catholics for their majorities - particularly in Scotland - are telling Government Ministers that if the conference decision is implemented Mr. Callaghan can wave goodbye to No. 10 forever.⁴⁹

In a rare survey of M.P.s' opinions on abortion carried out by two Sunday Times reporters, it is stated that:

... virtually every M.P. spoke of an avalanche of letters. Nine-to-one they came from the anti-abortion lobby and one M.P. reported receiving some 1,500 letters before the second reading of the Benyon Bill.⁵⁰

The success and energy of SPUC in this field gives concern to ALRA. Madeleine Simms has written:

At present it deploys its troops with much greater sophistication than do the rather disorganised and individualistic members of anarchic women's groups. Unlike them, the Catholic activists and their allies leave no stone unturned, no letter to the press unanswered. They have learned how to make⁵¹ a recalcitrant M.P.'s life a misery if he disobeys them.

5. Other influences

(i) The larger social environment

Between 1975 and 1977 there were two major attempts to amend

49. The Glasgow Herald, 17 October 1977.

50. The Sunday Times, 26 June 1977.

51. Simms, M.: Abortion and Democratic Politics, New Humanist, May/August 1977.

the 1967 Act; the first was a Bill presented by James White which had its second reading in February 1975, and the second by William Benyon, the second reading of which was in February 1977. The first attempt resulted in the establishment of a parliamentary select committee. Consequently there was a regeneration of interest which achieved an intensity parallel to that existing in the run-up to the enactment of the 1967 Act. A description will follow of the controversy aroused, in which it will be seen that many of the positions adopted and the viewpoints expressed in extra-parliamentary forums were adopted and formulated in direct response to the parliamentary contests and debates.

(ii) The mass media

Many newspapers and journals carried articles and correspondence on the abortion issue;⁵² a selection will indicate the range of concern over attempts to amend the 1967 Act.

When the Lane Report was published in 1974, a Times editorial described it as a 'Thorough if Inadequate Report'.⁵³ Immediately prior to the second reading of White's Bill The Times

52. See, for example: Morning Star, 16 February 1975, The Guardian, 3 March 1975, The Guardian, 14 May 1975, The Scotsman, 19 March 1975, The Sunday Times, 11 May 1975, The Sunday Times, 18 May 1975, The Scotsman, 20 May 1975, The Sunday Observer, 6 June 1975, The Sunday Times, 25 May 1975, Evening Standard, 29 July 1976, The Guardian, 30 July 1976, The Guardian, 12 July 1977, The Guardian, 26 June 1977, The Times, 31 January 1975, The Times, 2 February 1975, The Times, 7 February 1975, The Times, 21 February 1975, The Times, 6 August 1975, The Times, 29 July 1976; Harrison, Paul: Abortion: what the trends are, New Society, 31 July 1975, The Politics of Abortion (editorial): New Statesman, 5 March 1976; Turner, Jill: The battle of abortion, New Society, 11 March 1976; The Monstrous Regiments: Battle for and against Abortion, The Economist, 16 July 1977.

53. The Times, 4 April 1974.

carried two articles by Ronald Butt welcoming the White Bill as necessary to eradicate the abuses arising from the implementation of the 1967 Act. He wrote:

Is there any other area of social concern in which such detailed evidence of fraud and illegality, cruelty and profitable contempt of human life would not have been taken up and sifted in special television programmes and by means of investigating journalists ... But the evidence concerns abortion and the silence has been deafening.⁵⁴

The evidence to which Butt referred was the book Babies for Burning,⁵⁵ later discredited.⁵⁶ He went on:

The present Act was supposed, such was the bromide offered, to strike a balance between the rights of the mother and the rights of the foetus. By definition, even that specious claim will go out of the window ... the foetus will be left with no rights.⁵⁷

Butt also shows concern for the effect of the Act on the medical profession, which he sees as having been placed in an impossible position:

But most serious are the pressures to conform which doctors face ... Something that was once regarded with horror by most people can now be seen as a mere by-product of a social climate which has a very meagre notion of human dignity ... These are the points which Parliament should consider when it evaluates the ... important private Bill by which two members are trying to make the law work more responsibly.⁵⁸

54. Butt, Ronald: This Awful Silence Hanging Over Abortion on Demand, The Times, 23 January 1975.

55. Litchfield, M. and Kentish, S.: Babies for Burning, op.cit.

56. See Chapter Five supra and earlier in this chapter.

57. Butt, Ronald: op.cit.

58. Butt, Ronald: The dangerous pressure on doctors, The Times, 30 January 1975.

An editorial in The Times also came out in support of the White Bill:

It is not a wrecking measure in intention, and many of the abuses that it sets out to correct are ones that the supporters of the Act should take more seriously ... The clash between two principles in conscience, the principle of reverence for life and the principle of personal freedom, cannot be evaded. What can and should be stopped is the greedy exploitation of the abortion trade by a small number of doctors and their associates.⁵⁹

The Times view was not shared however by other newspapers.

The Observer carried an article by Paul Ferris entitled Putting the Clock back on Abortion in which he stated:

... There is every chance of the law being changed to make abortion more difficult ... However necessary some of the measures may be, they [i.e. the ones to stop racketeering] are not the heart of the Bill. A press statement from its sponsors says that it "does NOT seek to limit the existing grounds for a lawful abortion", but this is immediately contradicted by the Bill itself ... If the law does become more restrictive, it goes without saying that the usual people will suffer. Criminal abortion has dwindled but it could be back in all its nastiness tomorrow. Leo Abse said in the House of Commons that the bells had begun to toll for the avaricious.⁶⁰ Perhaps they have begun to toll for the women as well.

An editorial in The Sunday Times also supported the retention of the 1967 Act and voiced its opposition to any attempt to amend it:

If the new Abortion Bill ... becomes law it will create a vast amount of individual suffering. The words in that judgement are not ours but we agree with them ...

The moralities of abortion are complex - is the embryo a person or a potential? What are the rights of the family? Is there any morality without choice? In itself

59. The Times, 7 February 1975.

60. The Observer, 16 February 1975.

abortion will always be a tragedy, but few women decide without anxiety, doubt and grief. There is certainly no morality in the imposition of a code by those who do not have to bear its consequences. The 1967 Act was a credible reconciliation of all these difficulties. It should be left alone.⁶¹

So too, The Guardian:

It [the White Bill] creates more confusion, more anxiety, more distress for women already in a distressed state ... No profound reform ever justifies itself unless it is given a chance. Mr. White's amendments, plus the surrounding din, merely throw away that chance.⁶²

(iii) Public opinion

Public opinion expressed itself partly through those pressure groups which supported either ALRA⁶³ or SPUC.⁶⁴ Both organisations also used the technique of mass demonstrations, SPUC being particularly successful in attracting many thousands to its cause.⁶⁵

61. The Sunday Times, 11 May 1975.

62. The Guardian, 14 May 1975.

63. Groups supporting ALRA's aims include the TUC; the National Trades Council, the National Labour Women's Advisory Committee; The Labour Party Young Socialists and the Labour Party. For a list of those supporting Co-ord (and therefore ALRA to some extent) see fn. 30, supra.

64. Included in those are Life, Let-live, the Festival of Light, The National Viewers and Listeners Association, the Human Rights Society, The International Pro-Life Movement.

65. An estimated 50,000 demonstrated in London alone on 19 October 1975, see The Times, 20 October 1975.

Another means of assessing public opinion is by opinion polls. In 1975, SPUC sponsored a Gallup survey of the general public's attitude to the James White Bill. This showed that 62 per cent were in favour of abortion in only particular circumstances; 12 per cent were totally opposed to abortion and 18 per cent were in favour of abortion on demand. Of those agreeing with the availability of legal abortion in certain circumstances, 72 per cent thought that its availability should be subject to there being 'grave risk to the life or grave injury to the physical or mental health of the mother' whereas 8 per cent thought this would be too lax a provision and 17 per cent ~~thought~~ it too restrictive. In 1976, however, NOP found public opinion to be rather different; 55 per cent were in favour of abortion on request with only 31 per cent against. The evidence from these polls is thus inconclusive.

6. The churches

(i) The Church of England

As a result of the resolution passed in February 1974 by the General Synod, the Church of England was committed to undertake a review of its position on abortion for the first time since its major statement of 1966. In fact a working party had already been formed jointly with representatives of the Methodist Church to examine the matter 'as far as possible in all its aspects'.⁶⁶ The report of this joint working party has never

66. Report of Proceedings of General Synod of Church of England, vol. 6, 30 June 1975.

been made public as its publication was stopped by the Board for Social Responsibility,⁶⁷ ostensibly because the report was inadequate.⁶⁸ Yet, during a debate of the General Synod, it was described by the chairman of the Board as being 'a most careful, conscientious and scientific piece of work'.⁶⁹

Reports have been made⁷⁰ which suggest that the joint working party was favourably disposed to the workings of the 1967 Act and the spirit behind that legislation and disagreed with the fundamental objective of the White Bill; the report of the joint party was to have laid the basis for the consideration of the churches' evidence to the Select Committee viz. to tighten the conditions under which abortion is allowed and to impose a residential qualification for foreign women seeking abortion. More importantly, however, it is understood that the suppressed report shifted 'some way towards the concept of abortion on demand, at least in the first twelve weeks of pregnancy',⁷¹ and that, 'although wishing to see the final decision remain with the medical profession, the key decision on whether

67. Ibid.

68. See The Times, 20 June 1975.

69. Proceedings of General Synod, op.cit., at p.348.

70. See The Times, 20 June 1975 and 23 June 1975; also New Humanist, August 1975.

71. See The Times, 20 June 1975.

to have an abortion should be the woman's'.⁷² This report also advocated the provision of extensive counselling services to women seeking abortion. What is certainly known is that the report did state that:

For many couples and single women the experience of abortion, particularly where there is adequate counselling and after-care, can be a learning process of great value, a means by which they discover the significance of conception and the beginning of new life.⁷³

This particularly gave rise to concern for:

Standing as one of the main conclusions, [it] would cause grave misunderstanding ... and would have been acclaimed as the view of the Church ...⁷⁴

In the event, the Board for Social Responsibility produced its own report which was accepted by the General Synod in July 1975.⁷⁵ It⁷⁶ expressed general support for the White Bill, although reservations over its precise terms, and was described as:

72. These reports are supported in particular by the evidence of Mrs. Cornwall-Jones, the only woman member of the Church of England's delegation to the Select Committee on abortion but see also that of Professor Dunstan (see Reports of the House of Commons Select Committee on the Abortion (Amendment) Bill 1975 H.C. 250-iii 22 March 1976. Hereinafter this will be referred to as Select Committee).

73. Proceedings of General Synod, 1975 op.cit., pp.348-349.

74. Ibid.

75. Ibid.

76. Church of England: Abortion Law Reform, 1975.

More of a gesture to indicate Christians' general anxiety ... than the discovery of a real answer to the deeper questions which are being asked.⁷⁷

However, this official policy was later challenged by the secretary of the Board for Social Responsibility in an editorial in the Board's official journal. He argued that doctors' attitudes had changed in the last decade:

... away from the Olympian judicial style and towards that of the sympathetic technician, offering skills but leaving his patient⁷⁸ to make the fundamental personal decisions.

and went on:

When once the majority of the medical profession conclude that the best interests of the woman are served, and their own legitimate interests are protected, by a system of abortion on considered request, is any useful purpose served by retaining enactments which assume that induced abortion is to be treated as a felony except in carefully defined circumstances? A law which so imperfectly reflects contemporary attitudes and practice is surely a liability to the general interest in maintaining respect for the law.⁷⁹

Moreover, he anticipated a day when an effective self-administered abortifacient drug would be available and in the light of this suggested that Parliament should be concerned with framing a body of law 'which will be apt for tomorrow's purposes rather than yesterday's'.⁸⁰

The division within the Church of England is reflected in the oral evidence given to the Select Committee on Abortion.⁸¹ The

77. Ibid.

78. The Crucible, January 1976. (For a report, see The Times, 26 January 1976.)

79. Ibid.

80. Ibid.

81. Report of the House of Commons Select Committee on the Abortion (Amendment) Bill 1975 H.C. 250-iii 22 March 1976.

Bishop of Truro laid stress on the view that abortion was still to be regarded as an 'emergency procedure' rather than as a 'kind of normal process of disposal' which was viewed as being totally abhorrent and incompatible with the inviolability of the foetus. Nevertheless the church, he said, had not moved from its position that, in the decision to terminate, the whole of the woman's situation should be taken into account but it hoped that this would displace the view that balancing the risk to life of termination against that involved in continuation of a pregnancy was a sufficient criterion on which to base any decision. Furthermore, he expressed the need for adequate counselling and social help for women seeking abortion and also for the end of any victimisation or discrimination against members of the medical profession choosing to exercise conscientious objection. Mrs. Cornwall-Jones, a member of the joint working party, stated:

Speaking for myself alone, I would say that if in the first trimester, a woman, after proper advice, knowing the risks and the alternatives, makes up her own mind that abortion is the only solution, then hers must be the key decision, taken⁸² in proper partnership with her medical advisers.

(ii) The Roman Catholic Church

The delegation of the Roman Catholic Church to the Select Committee was particularly large with no fewer than twelve witnesses attending.⁸³ The memoranda submitted to the committee clearly stated the Catholic position as being opposed to

82. Ibid.

83. Select Committee Reports: H.C. 250-iv 29 March 1976.

abortion in principle:

We believe that God is the ultimate authority of life and that this imposes responsibility on mankind. The protection of human life is a fundamental principle ... All the members of this delegation and those they represent are against abortion in principle ... The members of the delegation approach ... [the meeting] as an opportunity to support any measures which are leading towards a less permissive attitude towards abortion in general.⁸⁴

The memoranda state further:

The slogan "A woman's right to choose" has been used as an argument for abortion on demand. It is suggested that it is an impertinence for the community to decide that a woman must continue with a pregnancy which she herself does not wish to continue ... It is strongly urged that in the question of life and death, the individual ... must submit to the community as a whole. ... In the case of abortion ... such a decision cannot be left to the whim of an individual who is attacking the right to life which belongs to an innocent person as yet unborn.⁸⁵

It strongly supported every clause of the White Bill except those dealing with legal and administrative requirements for the application of the law (clauses 11-16) on which it thought inappropriate to comment. It did, however, express one reservation on the proposed legislation, viz. that it still retained the balancing of the risk of serious injury to the physical or mental health of the woman or any existing children of her family which the church saw as being too permissive. The delegation stressed the unity of the Catholic Church in its beliefs:

Our own Church tends to be more coherent and therefore presents a more solid block of opinion ... the teaching of the Roman Catholic Church has been clear, concise and consistent down through the ages.⁸⁶

84. Ibid.

85. Ibid.

86. Ibid.

The unity of the church does appear, however, as with the Church of England, to be more apparent than real. After the delegation had given its evidence, there began a long correspondence in The Times on 'the Catholic viewpoint'.

This was started by Juliet Cheetham, a Roman Catholic who had been a member of the Lane Committee. She wrote:

For Catholics to keep private their liberal views is dishonest in that it gives a false impression of unity. It may also be cowardly when apparent consensus hinders sober analysis of the realities of the alternatives to abortion which are so often extolled, in great faith and great ignorance, by many Catholics.

Moreover, a study published in April 1976⁸⁸ showed that in 1973 only 43 per cent of Catholic women who had given birth in the six months beforehand were against abortion on request.

(iii) The Methodist Church

The Methodist Church, it is reported, decided not to publish the report of the ill-fated joint working party on its own for 'fear of giving offence to the Church of England'.⁸⁹ Instead a separate report was prepared by the Family Life Subcommittee of the Division of Social Responsibility which was subsequently adopted at the Methodist Conference.⁹⁰ It stressed five major points: rejection of abortion on demand; belief that even an early foetus must not be aborted without serious cause; insistence that counselling must always be offered so

87. The Times, 17 April 1976.

88. Cartwright, Ann: How Many Children? Routledge and Kegan Paul, London, 1976.

89. The Times, 20 June 1975.

90. See The Times, 29 June 1976.

that women may consider what is involved and the alternatives to abortion; no restriction of the law such as would deter women from seeking that counselling; responsible and equitable decisions on all requests for abortion.

The evidence given by the Methodists to the Select Committee is perhaps best described as pragmatic.⁹¹ Whilst recognising that 'there is never any moment from conception onwards when the foetus totally lacks human significance', they nevertheless expressed the belief that 'the degree of significance manifestly increases'. They thought therefore that it would be best to restrict all abortions to the first twenty weeks of pregnancy except where there was a direct physical threat to the life of the mother, or of a risk if serious abnormality in the foetus became known. They defended the present form of the 1967 Act as being of value in recognising the two competing rights to be balanced in decision making, but nevertheless saw its imperfections which required clarification or amendment either by legislation or administrative regulation.

These imperfections were seen as lack of counselling and inadequate NHS facilities, the latter allowing a private sector

91. Select Committee Report: H.C. 250-vi 12 April 1976.

to flourish in which racketeering did take place. It was stated that Methodists had constantly taken 'a middle view' on abortion on demand (which they rejected) and 'veered towards the woman in the first trimester and towards the foetus in the later stages'. Their rejection of abortion on demand stemmed partly from the view:

... that the woman does not understand what ~~she~~ is asking for and may exaggerate the difficulties and the isolation one feels and partly because at no point do we say that the status of the foetus is of no significance.

At best any legislation on abortion was:

... an attempt to balance rights and therefore abortion on demand should be rejected as totally denying any right the foetus has in the early stages.

On the specific clauses of the White Bill, the Methodists took the view that the adjectives 'grave' and 'serious' as applied to risk were too ill-defined for inclusion; that the words 'greater than if the pregnancy were terminated' should not be removed unless a precise definition of 'grave' and 'serious' could be given; that a residential requirement for foreign women should be resisted; that a system of licensing should be set up in order to reduce the profit motive; that counselling should be encouraged; that the requirement that the two medical practitioners certifying abortion should not normally be in practice together was reasonable; and that notification to G.P.s of abortion and the presence of parents of girls under 16 years of age in any advice-giving at consultation would probably lead to the deterrence of women seeking help.

The Methodists' oral evidence to the committee does not reveal any division within the church and was strongly criticised by the members of the committee, who suggested that the Methodists held 'outdated' views, totally opposed to the views of other churches.⁹²

(iv) The Church of Scotland

In a report of the Moral Welfare Committee in 1975, the Church of Scotland concluded:

We see the need for the Church to have greater confidence in, and give greater support to, the maturity and judgement of her people to make their own decisions. It is the duty of the Church to give her people the necessary information on which to make a moral decision, but in the end, in the freedom Christ gives, they must make their own choice.⁹³

However, in the evidence⁹⁴ the church submitted to the Select Committee that view is not much in evidence. It took the view that:

... the inviolability of the foetus is one of the fundamentals ... We firmly believe that from the moment of conception the embryo possesses the potential of full human life.

Abortion on request was thus rejected as it would:

... both trivialise the life and death issues involved in abortion and would constitute a grave breach of the principle of the sanctity of life.

Moreover, it was thought that the provision of abortion on request would 'cut away at an important part of the marital relationship, that is, procreation'. Their position, which might

92. For a report see, The Guardian, 13 May 1976.

93. Report of Church of Scotland Moral Welfare Committee on Abortion, 1975.

94. Report of Select Committee on Abortion: H.C.250-v 1976.

perhaps be thought curious, was that abortion was the lesser of two evils, that the church was not opposed to abortion in principle, but that:

We would want to maintain as a sort of priority the rights of the mother to live, but the mother's right to terminate life undoubtedly seems to us to come considerably below the right of the unborn child to live.

Taking that as its position, the church advocated that fairly stringent criteria be applied in decision-making and that abortion remain primarily a medical matter:

We are, to put it mildly, unhappy with the social grounds, so-called, which are in the present Act. We believe this is primarily and, indeed, it should be strictly a medical matter.

The church accordingly recommended the insertion of 'grave' and 'serious' to qualify risk to be taken into account in decision-making; the need for better counselling facilities to ensure that the possible alternatives to abortion are fully explored; the licensing of advisory bureaux to cut out profiteering; a strengthening of the 'conscience clause' to protect the medical profession; and the setting up of special NHS abortion units to protect doctors and patients, to provide better counselling and advice not only on abortion but also on contraception and to eradicate regional variation. The church summed up its approach as being 'not simply to argue for restrictive legislation but an overall positive approach to the abortion issue'.

7. The medical profession

The Lane Report was met with general approval by the medical profession. The RCOG was perhaps most critical and the RCOP most favourable. The former stated that:

The majority of members of Council welcome the recommendations of the Report as a whole, but a minority of members who are opposed to termination of pregnancy on socio-economic grounds regret that the terms of reference excluded consideration of the criteria in the Act.⁹⁵

The statement did however reiterate one of the College's recommendations, that is that the regulations should be altered so that at least one of the doctors signing the first certificate should have been registered for at least five years.

A leading article in the BMJ assessed the Lane Report thus:

The Report is not a whitewashing exercise ... Running through the seven hundred pages of the report is a humanitarian approach to the problem.⁹⁶

This leader also commented that 'the situation has changed, abortion for a wide range of indications, is now part of conventional medical practice in Britain'.⁹⁷ Furthermore it expressed the hope that:

Perhaps the most useful result of the exhaustive inquiry by the Lane Committee ... could be the fading away of so much shrill and emotional argument, for it is now clear

95. Statement issued after a meeting of The Council of the RCOG on 15 June 1974.

96. British Medical Journal, 13 April 1974, pp.69-70.

97. Ibid.

that no major change will be made in Britain in the foreseeable future.⁹⁸

This hope was not realised and once again the various branches of the medical profession were forced to reappraise their attitudes to legal abortion.

(i) The BMA

Although the White Bill received its second reading in Parliament in February 1975, it was not until May of that year that the BMA produced a commentary on the provisions of the proposed legislation.⁹⁹ The publicised version of this commentary was brief¹⁰⁰ and stressed only that there were inherent dangers in the amending Bill. In particular, it was felt that doctors would be jeopardised by the attempt to shift the onus of proof from the Crown to the accused and that the adjectives 'grave' and 'serious' were so ill-defined that doctors could find themselves frequently in court until some judicial interpretation clarified their meaning. The report of the general medical committee of the BMA is rather fuller in the version published in the BMJ.¹⁰¹ This shows quite clearly that the BMA feared any attempt by Parliament to interfere with medical freedom:

... [The Bill]¹⁰² is a serious threat to the freedom of doctors.

98. Ibid.

99. See The Times, 17 May 1975.

100. Ibid.

101. British Medical Journal, 17 May 1975, p.352. |

102. Ibid.

The restriction on the profession's freedom was seen to stem from a number of factors: from the restrictions placed on the indications for legal abortion; from the attempt to make it an offence for a doctor to advise girls under sixteen without the presence of their parents; from placing the onus of proof on doctors in any prosecution; and from the granting of anonymity to anyone giving evidence in abortion proceedings. The BMA took the view that the basic intention of the Bill's sponsors was to reduce the number of legal abortions performed by making the procedure legally hazardous for doctors. However, the BMA rejected the view that restrictive legislation would eradicate abuses of the Act (which they recognised) and that the only solution to these abuses lay in the provision of better NHS facilities.

The fact that the BMA had done so little to publicise its views led to anger on the part of some young members of the profession, which manifested itself in a sit-in of the BMA headquarters to protest at the 'silence' of the Association to the White Bill.¹⁰³ The protesters wished the BMA to organise a national petition among the medical profession against the Bill and to publicly announce its opposition. This protest was partly successful for the BMA did issue a press statement which affirmed such opposition.¹⁰⁴ The unity of this opposition

103. See The Times, 23 May 1975.

104. See The Times, 24 May 1975.

was shown by the fact that when the conference of local medical committees met in May 1975, only four out of 360 delegates opposed the position adopted by the BMA.¹⁰⁵

In its evidence to the Select Committee the BMA stated that:

In general, the Association supports the recommendations of the Lane Committee ... and has grave doubts whether the proposed Bill would achieve the purpose of the sponsors to find a reasonable consensus of opinion which would make sensible provision for removing some of the abuses of the Act.¹⁰⁶

The opposition to the Bill was based on two interrelated factors; the threat to the freedom of doctors and the lack of clarity and difficulty of enforcement of the provisions of the Bill. Specifically, the BMA thought that the reference to 'doctors not normally in practice together' needed clarification to exclude NHS doctors; that both certifying doctors should have been registered for a specified number of years (three was recommended); that the introduction of 'grave' and 'serious' to qualify risk would be a retrograde step taking the law back to the pre-Bourne position and its vagueness would open the way to prosecutions of doctors; that a residential qualification for foreign women would be difficult to enforce, would place too great a burden on doctors

105. See The Times, 12 June 1975.

106. Report of Select Committee on Abortion: H.C. 253-ix, 23 June 1975.

and would be against medical ethics; that notification of abortion to a patient's G.P. was reasonable, but again a burden on doctors; that attempts to discourage touting were to be recommended as was licensing of referral agencies, but that both provisions required clearer drafting to exempt bona fide advisers; that the presence of a parent for girls under sixteen was to be encouraged but could not be made a legal condition as it would jeopardise the confidentiality of the doctor-patient relationship; and finally that changing the onus of proof was totally unacceptable.

The commitment of the BMA to opposing any attempt to restrict the provisions of the 1967 Abortion Act was reaffirmed at the 1977 annual conference when the association voted overwhelmingly to oppose the Benyon Abortion (Amendment) Bill, taking the view that any deficiencies in the working of the 1967 Abortion Act could be made good by changes in regulations.¹⁰⁷ It was stated that there had been an enormous change in the profession's attitude to the Abortion Act in the ten years since it had become law. Barely concealed hostility had changed to support 'because we, the ordinary doctors, have seen the enormous benefits this Act has brought'.¹⁰⁸

(iv) The RCOG

The evidence the RCOG gave to the Select Committee¹⁰⁹ shows

107. See The Guardian, 22 July 1977.

108. Ibid.

109. Report of Select Committee H.C. 253-x, 30 June 1975.

that the RCOG had shifted towards a more favourable view of the 1967 Act. Part of the evidence was heard in private, however, and it would appear that the change in attitude was explained then so one cannot account for this change. In giving evidence Sir Stanley Clayton, President of the College, said:

I would be quite happy personally if the Act were left exactly as it is.¹¹⁰

He stated that he was also speaking on behalf of the College, for the Council had voted 28 to 2 in favour of the retention of the 1967 Act as there had been:

As great a shift of opinion within the College and within the profession as there had been in the public.¹¹¹

Furthermore, this change in attitude had occurred after the College had submitted its evidence to Lane which explains the discrepancy between the two sets of evidence. The new prevailing opinion of gynaecologists was that the 1967 Act was working well in general but that the abuses occurring, especially in the private sector, could be stopped by administrative action and that the only 'worry of the College was why the Lane Report was not being implemented, which would be the simplest answer to the whole thing'.¹¹²

However, Clayton took cognizance of the fact that there was pressure to modify the 1967 Act and gave the College's

110. Ibid.

111. Ibid.

112. Ibid.

reactions to those proposed modifications. Specifically, it was thought that the Bill was badly drafted and required clarification. In particular the phrase 'two doctors not normally in practice together' required amendment to exclude practitioners working within the NHS; that the words 'grave' and 'serious' as applied to risk were ill-defined and would therefore place doctors in jeopardy during any legal proceedings; that a residential requirement for foreign women was too difficult to enforce effectively and would also be medically hazardous given that it would involve considerable delay in the performance of any operation; that notification of abortion to a patient's G.P., although good medical practice, was not always possible; that the presence of a parent of a girl under sixteen would jeopardise the confidentiality of the doctor-patient relationship; that every G.P.'s surgery would have to be licensed especially to allow the G.P. to provide abortion advice; that an upper time limit of twenty weeks required an exception for rare cases involving real risk of death or consequent ill-health if the pregnancy continued; and that to reverse the normal onus of proof in criminal proceedings was totally unacceptable.

A 1977 Gallup poll¹¹³ commissioned by SPUC found that 70 per cent of gynaecologists believed abortion up to six months pregnancy carried little risk to the woman. It confirmed that

113. See The Guardian, 13 July 1977.

the overwhelming majority of gynaecologists (81 per cent) thought abortion should be available only in defined circumstances. However, when asked specifically about abortion on demand, only 57 per cent were totally against whereas 30 per cent favoured it in certain circumstances (e.g. during the first three months of pregnancy). Most gynaecologists (83 per cent) did however think that abortion on demand was generally available.

(iii) The RCOP

The evidence given by the RCOP to the Select Committee strongly opposed the White Bill which was seen as an attempt to 'put back the clock' which would be a 'public health disaster' if passed.¹¹⁴ In particular the words 'grave' and 'serious' as applied to risk were viewed as unnecessary, restrictive in intention, difficult to interpret and so ill-defined that they would lead to legal hazards for a doctor. Every clause was subject to criticism on the grounds that they were impractical; difficult to enforce; would not lead to the eradication of abuses which it was thought would only happen with increased NHS facilities; would cause unnecessary suffering on the part of women and would be a burden on doctors. The evidence of the Royal College was supplemented by that of twenty senior members of the psychiatric team at Charing Cross Hospital, London, who recommended that the entire Bill should be scrapped.¹¹⁵

114. Report of Select Committee H.C. 253-ix, 23 June 1975.

115. See The Times, 1 July 1975.

8. Legislative attempts to amend the law

(i) James White's Bill 1975

James White was the first Labour M.P. to try to amend the 1967 Abortion Act. He had secured third place in the private members' ballot in November 1974, and his chances of success were therefore rather higher than those of earlier M.P.s who had sought new legislation. White's motives were partly inspired by election considerations for he said that he had never thought of abortion until the 1970 election.¹¹⁶

He initially described his aims as being:

... to curb the gross abuses which are causing such widespread concern among the public and members of Parliament alike ... The law was originally passed in order to help dire cases, yet it had led to abortion on demand, and an ever increasing number of M.P.s who originally voted for the Act in good faith are now calling for changes.¹¹⁷

The Bill's intention then was not to prohibit all abortion but to restrict it to 'dire' or 'hard' cases. The stance taken by the supporters of the Bill which became the Abortion Act 1967 had been not to decriminalise all abortion but to permit it for 'hard' or 'dire' cases. The arguments used throughout the debate on the White Bill show remarkable similarity to those used during the passage of the 1967 Act. White thought that the best way to control abuses and avoid abortion on demand was to write into the Act stricter criteria of risk and remove reference to the balancing of the risks involved in termination

116. The Times, 31 January 1975.

117. The Scotsman, 28 November 1974.

with those associated with childbirth. This was necessary, he thought, as a straight statistical comparison of these risks always favoured termination which thus allowed abortion on demand to occur if two doctors held that to be the only criterion for decision making.

It was stressed that the sponsors of the Bill did not:

... intend to attack the so-called social clause of existing law which allows doctors to take account of a pregnant woman's actual or reasonably foreseeable environment.¹¹⁸

Moreover, it was argued by Leo Abse, a sponsor of the Bill, that the Bill was not a wrecking amendment and did not limit the grounds for abortion but would merely prevent 'criminal abortionists' who, by statistical arguments, thwarted the original intentions of Parliament.¹¹⁹ It was further intended that London should cease to be the 'abortion capital' of the world by legislation framed to prohibit abortions on non-resident foreign women.

There is some confusion as to who actually drafted White's Bill. He did have a committee of parliamentary colleagues, most notable of whom was Leo Abse, a long opponent of the 1967 Act and a lawyer who enlisted the help of other lawyers in the drafting, and there were meetings with representatives of SPUC, most notably Nicholas Fogg and Paul Cavadino, but there is a

118. The Times, 31 January 1975.

119. Ibid.

suggestion that a branch of the Roman Catholic Church was involved in the drafting of the Bill. This was denied by White in Parliament, but an article in The Scottish Catholic Observer¹²⁰ reports George Crozier, a Dunbarton solicitor and chairman of the Glasgow Archdiocesan Lay Council, as admitting to helping White draft his Bill.

The final Bill, produced only one week before its second reading, was long and complicated, running to some sixteen clauses organised in three parts;

- a. termination of pregnancy,
- b. experiments on foetus and foetal material,
- c. miscellaneous (covering regulations, burden of proof, penalties and the anonymity of witnesses in abortion prosecutions).

The text of this complex lengthy Bill is contained in an Appendix.¹²¹

The Bill's supporters and opponents naturally disagreed on its intended effects but there was one point of common agreement viz. that the number of legal abortions performed annually would be greatly reduced.¹²² The former estimated that they would fall by about 70,000 per year; the latter thought no more than 10 to 20 thousand abortions would be carried out per year.

120. Scottish Catholic Observer, 14 February 1975.

121. See Appendix 1(13) for copy of full text of Bill.

122. The Times, 6 February 1975.

Greenwood and Young have interpreted the Bill as:

... being primarily ideological in that it would permit abortion only where it will alleviate social problems and strengthen the nuclear family ... Abortion legislation would work as intended, only the "deprived" the "sick"¹²³ and the "inadequate" would obtain treatment.

They saw the provisions of clause 1(1) as a clear attack upon those 'psychopathic doctors' who had interpreted the 1967 Act liberally and prophesied that such a provision would delay the process of obtaining legal abortion, thereby forcing women to seek treatment in the private sector which the sponsors of the Bill wished to stamp out.¹²⁴ Clause 1(2) was described as the most restrictive clause in the Bill as:

... although theoretically doctors would still be able to take into account the environment of the woman or their existing families, the "grounds" would¹²⁵ be stricter and less women would get abortions.

Clause 7 was seen as having a potentially ironic effect given that it set an upper time limit of twenty weeks but the desire was to restrict legal abortions to hard cases, the young girl or the overburdened mother, both of whom were found by Lane to consistently seek abortion at a late stage in pregnancy. Furthermore, it was predicted that the ban on late abortions could lead to further excesses in the private sector, since late terminations could then command very high fees.¹²⁶ The clauses relating to restrictions on referral and advisory agencies were viewed as likely to have adverse consequences, unforeseen by their promoters, in that they would forbid the giving of advice

123. Greenwood, V. and Young, J.: op.cit., pp.56-57.

124. Ibid., p.48.

125. Ibid., p.51.

126. Ibid., pp.52-54.

by anyone other than a registered medical practitioner or a person approved for the purpose by the Secretary of State. This, Greenwood and Young state, would place abortion clearly in the realm of:

... the clandestine, the immoral and the taboo.¹²⁷

Again the impact of this provision would fall most heavily upon those women the Bill was designed to help, for:

... lack of time, knowledge and finance have always meant that it is harder for some women than for others to get abortions; limiting information would make this situation more unequal.¹²⁸

Finally, they state that concentration on the abuses served as:

... a justification for restrictions, as a front behind which the wider reformist concerns of the reformers could be masked, whilst mass support could be gathered.¹²⁹

There are other points which can be made on the Bill and its likely impact.¹³⁰ Greenwood and Young are probably correct in their assessment that the numbers of legal abortions would be severely reduced. It seems reasonable to assume that, in the seven years between the passage of the 1967 Act and the presentation of James White's Bill, doctors would have settled on criteria by which to judge whether there was a risk to life or health and that the Bill, if passed, would render those criteria useless. Moreover, the fact that interpretation of 'grave' and 'serious' could ultimately be a judicial interpretation might well be thought to deter doctors.

127. Ibid., p.54.

128. Ibid., p.55.

129. Ibid., p.56.

130. See, for example, those made by the Haldane Society of Labour Lawyers.

The intention behind clause 2 (residential qualification of foreign women) is perhaps rather difficult to interpret. Concern over foreign women seeking legal abortion in Britain tended to stem from the taxi-touting and profiteering associated with them, which would be controlled by clause 4 of the proposed Bill, rendering clause 2 superfluous. If, however, the intention was to prevent such women obtaining abortions then this was to place abortion totally apart from any other medical treatment, from which foreigners are not barred. Furthermore, doctors who refuse to treat patients on the grounds of nationality or any other similar criterion, offend professional medical ethics and risk being struck off the medical register.

Clause 3 (notification to a patient's G.P.) presented difficulties of enforcement since some (the number is unknown) women have no medical practitioner with whom they are registered as a patient. Clause 5 (the prohibition of advice giving) would have had far reaching implications. Its drafting was so imprecise that it is suggested that it could have been construed as rendering illegal the activities of, for example, social workers and the personnel of charitable bodies, whose pregnancy advisory and termination facilities augmented those of the NHS, or of any person providing advice on abortion without being especially licensed for the purpose by the Secretary of State. Similarly sub-section 5 of clause 5

might well be construed as prohibiting any individual from offering any information at all regarding abortion facilities (both in relation to advice and facilities).

Clause 7 (upper time limit of 20 weeks) might well have led to ill-health or the death of women given that the only exception allowed to the twenty week limit was for foetal abnormality and not for risks to the women. Clause 11 sought to place the onus of proof on the accused person to prove that he or she is not guilty of an offence, overturning the normal rule in criminal law that it is for the prosecution to prove the accused guilty.

The provisions of the White Bill differ greatly from the findings of the Lane Committee, which recommended that the inclusion of 'grave' and 'serious' would not result in a better implementation of the intention of Parliament; that there be an upper time limit of twenty four weeks; that no restriction should be placed upon abortion of foreign women but that provisions be made (if abuses such as taxi-touting continued) that legislation to avoid these abuses should be considered. In only one respect did the White Bill follow the recommendations of Lane (the licensing of medical referral agencies) but even here White was much more restrictive than Lane envisaged.

Four positions can be distinguished during the debate on the second reading of White's Bill:¹³¹ those wishing abortion to be legal on the grounds contained in the Amendment Bill; those wishing abortion to be legal on the grounds contained in the 1967 Act; those arguing for abortion on request but willing to uphold the principles of the 1967 Act in the face of the Amendment Bill; and those wishing to prohibit all therapeutic abortion but willing to support the Amendment Bill. The great majority of the speeches supported one or other of the former two positions.

The supporters of White's Bill argued that the time had come to end all abuses arising from the 1967 Act by ensuring that Parliament's intentions were genuinely carried out. Those were that the rights of the mother and of the foetus would be finely balanced in each decision and that each individual case would be judged on its merits. It was envisaged that the women who would benefit from the availability of legal abortion would be young girls; older married women with many children whose home circumstances were such that they could not face the prospect of another child and whose health was endangered by that prospect; and women who risked giving birth to a child known to suffer from some abnormality.

It was argued that there was instead abortion on demand due to the wording of the 1967 Act which allowed the risk involved

131. Hansard H.C. Vol. 885, cols.1757-1868, 7 February 1975.

in termination to be balanced against that involved in continuation of the pregnancy which, since statistically the balance favoured termination, allowed unscrupulous doctors to flout the intention of Parliament. Moreover, the 1967 Act had allowed the creation of a huge private sector to cater for the demand and which itself encouraged that demand by its very existence, as Babies for Burning had shown. This private sector was described as being the source of many of the abuses which had given rise to such concern over the years and over which the DHSS appeared to exercise only ineffective administrative controls. Concern was expressed for women who were granted operations the dangers of which they were unaware; who were exploited by ruthless 'sharks'; and who were often given inadequate medical care and inadequate medical judgement. Concern was also expressed for members of the medical profession who were thought to suffer intolerable pressures from the demands created by the 1967 Abortion Act. It was repeatedly stressed that the Bill was not a wrecking amendment, that it 'retained the existing grounds for abortion' but sought to ensure that 'those existing grounds are observed'.¹³²

The supporters of the 1967 Act argued from a different standpoint. They stressed that one of the prime objectives of the 1967 Act had been to stamp out criminal backstreet abortion with its attendant suffering; that this had been

132. Ibid., col.1780.

achieved; and that it would return if the Bill became law. The view that abortion was an intrinsically dangerous operation was disputed and the findings of Lane were cited to support this belief. The existence of abuses in the private commercial sector was not denied, but it was argued that increased administrative action, now taking place, would stop them.

The 1967 Act was defended as embodying the best compromise of two conflicting values, the life and health of the mother and the sanctity of the unborn child, by allowing the medical profession freedom to exercise its judgement in each individual case. To insert 'grave' and 'serious' as criteria applied to risk was attacked as a regressive step which would cause suffering to women and hardship to the medical profession in its interference with medical judgement and its ill-defined nature, which would make decision making unnecessarily difficult and open the way to frequent prosecutions. Concern for the medical profession was also manifest in the objections raised against reversing the normal requirements regarding onus of proof in criminal proceedings; it was predicted that this was bound to cause a substantial reduction in the availability of safe legal abortions, especially when read with the proposed vaguely defined criteria for decision making.

Those who argued in favour of the retention of the 1967 Act in the absence of abortion on request stressed that this

issue above all concerned women and that, since the passage of the 1967 legislation, working class women had been able to get what better-off women had always been able to obtain. It was argued that no woman ended unwanted pregnancies for frivolous reasons, but only after deep thought and consideration and that her decision ought to be respected and given due weight. The proposed legislation was seen as being clearly intended to undermine the original Act to such an extent as to make it 'unworkable and Draconian for women'.¹³³ It was thought to be inspired by the Roman Catholic Church and by the inundation of Parliament with propaganda material of distorted pictures of foetuses. The real abuses of the 1967 Act were the deficiencies of NHS provision which drove women to the private sector. Fortunately, not all of the private sector was corrupt, for there existed respected charitable bodies which 'filled the need which ought to be met by the NHS',¹³⁴ but which were being attacked by the proposers of the Bill on the same grounds as was the private commercial sector.

The view of those who opposed all abortion but were willing to support the present Bill as a compromise measure was plainly expressed by Donald Stewart, a sponsor of the White Bill:

I shall make my objection to abortion on one fundamental ground. I believe it is a great sin ... I welcome the Bill. I think that in some degree it will remove the abuses of the 1967 Act.¹³⁵

133. *Ibid.*, col.1815.

134. *Ibid.*, col.1817.

135. *Ibid.*, col.1828.

The position adopted by the Government proved to be crucial to the outcome of the Bill. Dr. David Owen, then Minister of State at the DHSS, explained the Government's wish to establish a parliamentary select committee to examine fully the issue of abortion. He stressed that the Government wished to deal with this matter speedily and that what was proposed was not a delaying tactic. A commitment was given that:

Should the eventuality arise that the House goes into a different session before the Bill is considered, the Government ... will re-establish the Select Committee.¹³⁶

He went further and said that:

The truth is that it is more likely to reach the statute book more quickly through adopting the proposed procedure. Not only is a pre-legislation Select Committee a good principle, but it is a sensible way in which to proceed in a difficult area. When the Select Committee reports, it will be open to Members to put forward legislation in the normal way or for the Government to consider whether they themselves should put forward legislation.¹³⁷

It is noteworthy, however, that he refused to commit the Government to introducing legislation based on the report of a select committee. Owen also outlined the Government's position regarding the White Bill should a select committee not be appointed. In these circumstances it was unlikely to support the Bill by granting it any necessary extra time.

Owen also announced the administrative action taken by the Government to control abuses and stated that it would not rest until all exploitation of patients had been stopped and abuses

136. Ibid., col.1794.

137. Ibid., col.1795.

of the Act curbed. The Government supported the principle of legislation in the area of licensing pregnancy advisory bureaux but opposed the attempt to qualify risk as being 'grave' or 'serious'. This, Owen said, was restrictive and therefore contrary to the central conclusion of the Lane Committee. In addition, he argued that the full import of this provision was not apparent until it was read with clause 11 (onus of proof) which, taken together, would deter doctors from performing abortions. Furthermore, the adjectives 'grave' and 'serious' had been rejected during the passage of the 1967 Abortion Act on the advice of the Lord Chief Justice who had said that since there was always some risk involved in either abortion or continuation of pregnancy what was needed was a means of balancing those risks by reference to a test of comparison. 1

Both White and Abse, his principal sponsor, welcomed the initiative of the Government in seeking to set up a select committee and tried to withdraw the Bill. However, they were opposed on this and the Bill was given an overwhelming majority by 203 votes to 88. The Government's position had been that it wished to establish a select committee not solely on the Bill but on the need for abortion legislation in general but, after the vote on second reading, a motion was moved and carried that the Bill be sent to a select committee.

(ii) The select committee on abortion

The Select Committee, appointed in February 1975, had 15 members. The Labour M.P.s were Leo Abse, an opponent of the 1967 Abortion Act and sponsor of the White Bill; Betty Boothroyd and Helé^{ne} Hayman, supporters of abortion on request; Kevin McNamara, a Roman Catholic supporter of the White Bill; Dr. Maurice Miller who had supported the 1967 Act when it was passed but who now supported the White Bill; James White; and Fred Willey, a supporter of the White Bill and chairman of the Select Committee. The Conservative members were Elaine Kelle^{tt}-Bowman, who did not vote on the White Bill; Andrew Bowden, a supporter of the White Bill; Sir Bernard Braine, who had voted both for the second reading of the 1967 Act and yet also for every Bill to amend it since then; John Biggs-Davison, a Roman Catholic opponent of the 1967 Act; Antony Fell, a Roman Catholic supporter of the White Bill; and Sir George Sinclair, a supporter of the 1967 Act. The Liberal member was David Steel, an opponent of the White Bill. There were therefore nine known supporters of the White Bill, five known opponents, and one unknown who later proved to be a supporter of the White Bill.

The Select Committee was empowered to send for papers, persons and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; to report from

time to time; and to report Minutes of Evidence from time to time.¹³⁸ By the time it finished sitting it has received written and/or oral evidence from over two hundred individuals and/or organisations. The work of the committee was beset by problems almost from the start due to the deep division of the attitudes of its members. Its composition gave rise to a series of protests, most notably in Parliament where ten Labour women M.P.s unsuccessfully demanded that the committee be increased so that two other Labour women back-benchers could join and thus redress its balance.¹³⁹

It produced four special reports¹⁴⁰ in its first session, the most important of which was the third, produced in July 1975, which was unanimous and contained specific recommendations.¹⁴¹

The Times considered that it 'probably represented the lowest common denominator in a committee sharply divided on whether the grounds for abortion should be made more restrictive'.¹⁴² The report did not refer to the provisions of the White Bill. Again

The Times may be quoted:

Sharply divided ... and discouraged perhaps by the weight of official and medical opinion against any change in the form as opposed to the operation of the existing law ... the Select Committee has not even referred to the provisions of the [White] Bill ... Instead [it] has concentrated upon areas of possible agreement rather than of inevitable disagreement.¹⁴³

138. First Special Report of Select Committee, H.C. 253, 3 March 1975.

139. See The Times, 14 March 1975.

140. Reports of Select Committee: H.C. 253, 3 March 1975, H.C. 496, 21 July 1975, H.C. 552, 30 July 1975, H.C. 692-1, 10 November 1975.

141. Hereinafter referred to as the interim report.

142. The Times, 6 August 1978.

143. Ibid.

The areas of possible agreement referred to were the abuses seen to arise from the implementation of the 1967 Act; the interim report's recommendations were limited to administrative changes which were regarded as matters for urgent action. It recommended that the DHSS lay a duty upon G.P.s, hospitals, pregnancy advisory bureaux, etc. that they must inform women of the availability of counselling both before and after a decision on abortion is taken; that any certificate of opinion should be given only after medical examination of the woman; that the methods of officially recording abortions (certification and notification forms) be examined with a view to improvement; that the regulations under the 1967 Act be amended to allow disclosure of information given to the Chief Medical Officer to the General Medical Council in order that the latter may investigate professional misconduct; that the DHSS should ensure that terminations carried out after the twentieth week of pregnancy should only be performed in hospitals with appropriate equipment, including resuscitation equipment; that the Report of the Advisory Group on the Use of Foetus and Foetal Material be implemented forthwith; and that better records be kept of the numbers of foreign women obtaining abortions and checks made that foreign women did not constitute the majority of patients at any one place.

Perhaps, however, the two most important recommendations related to the private sector and referral agencies. The committee

thought that the DHSS ought to draw up a scale of fees with which private clinics must comply; that any financial arrangements between a clinic and a referral agency or advice bureaux must be published; that private clinics must give an undertaking not to perform abortions after twenty weeks gestation, except if they have been especially approved to do so by the Secretary of State. Furthermore, it was recommended that approval of 'other places' by the Secretary of State should be contingent upon the clinics complying with the above conditions. It was recommended that the DHSS draw up a 'white list' of approved referral agencies and bureaux. Moreover, a further criterion for approval of private clinics should be that they be required to accept patients only from approved referral agencies or bureaux. The report also indicated that a re-established committee would comment on the provisions of the White Bill.

The Government's response to the interim report, unlike that to Lane, was immediate. It announced in October that it accepted in principle all nine recommendations made as being necessary to curtail abuses occurring in the administration of abortion law.¹⁴⁴ Barbara Castle, then Secretary of State for Social Services, announced the administrative changes which had been or would be made as a result of the Select Committee's recommendations and said:

144. The Times, 21 October 1978.

I think the House will be glad to know that action is being or has already been taken on all the recommendations made by the Select Committee in their Third Report and on many of the major recommendations of the Lane Committee.¹⁴⁵

Furthermore, she announced that although the White Bill and the Select Committee on it had now lapsed, nevertheless the Government wished to honour its pledge that it should be re-appointed. Accordingly it was thought that the House should be given the opportunity of deciding whether it desired this course of action and a motion would be tabled to test that question early in the next session of Parliament. The formal Government motion was tabled on 10 January 1976 that a Select Committee be established to consider the Abortion (Amendment) Bill, committed to a Select Committee in the last session of Parliament. It was proposed that any new committee should be composed of the same members as the previous one, in order that the balance of opinion should not be altered. On a free vote the motion was carried by 313 votes to 172.

Those opposed to its re-establishment tried to argue that the motion was without precedent because it invited M.P.s to set up a Select Committee to consider a Bill which had already lapsed in the last session and that it would be a waste of parliamentary time and resources to set up another Select Committee on such narrow terms of reference. David Owen however said:

145. Ibid.

To have refused to put this motion down would have been to shield behind a technicality and would not have been in keeping with the spirit of the previous debate. Whatever the views, it was the duty of the Government to give the House the opportunity to decide whether to re-appoint the committee.¹⁴⁶

The re-constituted Select Committee was bedevilled by problems from its inception. Within a week the six M.P.s opposed to the White Bill resigned in protest at its bias towards the anti-abortionists, and expressed the belief that the committee's work was finished and that any further deliberations would undermine the Abortion Act 1967 and make it more difficult for women to get abortions.¹⁴⁷ Only one other member was appointed in their place, Nicholas Winterton, a Conservative supporter of the White Bill. In addition to the protest by the M.P.s there was a boycott on giving evidence to the committee by the sixteen leading pro-abortion groups,¹⁴⁸ including the Family Planning Association, the two main abortion charities, ALRA and NAC.¹⁴⁹

The re-constituted Select Committee produced two reports, in July and November 1976.¹⁵⁰ The most important, for the purposes of this study, was the first, since it affected

146. See The Times, 10 February 1976.

147. See The Evening News, 2 February 1976 and The Times, 5 March 1976.

148. Members of Co-ord.

149. See The Times, 5 March 1976.

150. Report(s) of Select Committee H.C. 573-1, 12 July 1976, H.C. 737, 22 November 1976.

legislation whereas the second did not. The latter recommended that an Advisory Committee should be established on Research and Counselling on Abortion; that administrative action should be taken to strengthen the position of conscientious objectors to abortion, including nurses; that consideration should be given to the possibility of establishing, on an experimental basis, special NHS abortion units in areas with low NHS abortion rates; and that pilot studies be made into the cost-effectiveness of the provision for termination of pregnancy in the NHS.

The first report recommended that the Government should introduce legislation without delay to cover a range of abuses and provided detailed comment on what provisions ought to be made in that legislation by examining the provisions of the White Bill. It was recommended that the 1967 Abortion Act should be amended to ensure that the final decision on abortion should be taken by doctors with maturity and insight, a view supported by the BMA and the RCOG. This would be by providing that, if in private practice, the two registered medical practitioners necessary to certify the abortion should not be partners and the one should not be the assistant of the other, or be employed in, or share a financial interest in, the same nursing home or agency. Moreover, it recommended that one of the two certifying doctors should be of at least five years' standing.

The committee considered the criteria on which the grounds

for legal abortion are based and especially the possibility of amending that criteria by qualifying the risk to be assessed as being 'grave' or 'serious'. In the event, it took the view that this was so contentious an issue that it ought to be left to the individual consciences of M.P.s to decide and therefore it made no definite recommendation, save to express the hope that an opportunity should be created for full discussion of the issue in Parliament.

The White Bill had required that all approved nursing homes should have on their staffs a consultant medical adviser to superintend and approve clinical procedures, the appointment of staff and the use of the home by registered medical practitioners. The committee, however, recognised that this provision was subject to drafting and practical difficulties (a view expressed by the DHSS and the medical bodies) and took the view that it was a matter for administrative regulation, not legislation, after consultation with the professional bodies. The Select Committee also disagreed with the provisions of the White Bill which sought to impose a residential qualification on foreign women seeking abortion. It recommended merely that quarterly returns be made of foreign women obtaining abortion and that these returns should be published together with a full statement of the special facilities provided for their reception, counselling and aftercare.

The report accepted in principle the provision of the White Bill which required notification of abortion to the woman's G.P., but stressed that this should only be done after

obtaining her consent in accordance with regulations to be made by the Secretaries of State. Although welcoming the quick response of the DHSS to the recommendations made in the interim report regarding referral agencies and advisory bureaux (clauses 4 and 5 of the White Bill) the committee took the view that the need for legisla^{ti}on remained since administrative power fell short of the changes deemed necessary. It recommended therefore that legislation be introduced to require all referral agencies, pregnancy advisory bureaux and pregnancy testing centres which charge fees to be licensed by the Secretaries of State. Moreover, it was recommended that no exemption from this requirement should be granted to the charitable agencies.

In principle the Select Committee accepted the need for clause 6 of the White Bill (approval and regulation of premises on which advice on or treatment for the termination of pregnancy is given) but thought it badly drafted. In particular it stressed that exceptions to the clause were required for advice given by G.P.s and to preserve the exception for emergencies in section 1(4) of the 1967 Act. Accordingly it recommended that legislation should oblige the Secretaries of State to make regulations by Statutory Instrument for the licensing and controlling of the use of places for abortion and for referral agencies, pregnancy advisory bureaux and pregnancy testing centres which charge fees.

Another major recommendation of the Select Committee was that the 1967 Act should be amended to lower the upper time limit for legal abortions from twenty eight weeks to twenty weeks but that exceptions should be made above that period in the case of foetal abnormality and where it was necessary to save the life or prevent grave permanent injury to the physical or mental health of the pregnant women; and to provide the Secretaries of State with powers to vary the upper time limit by Statutory Instrument. White's provision on this aspect, that exceptions would only be allowed for foetal deformity, was seen as being too restrictive.

The committee further recommended that the implementation of the Report on the Use of Foetus and Foetal Material (the Peel Report) (clauses 8 and 9 of the White Bill) which had been activated by the DHSS in response to the interim report should be monitored, reviewed and reported to the House, no legislation being necessary on the lines envisaged in the White Bill. Clause 10 of the White Bill (restriction on publication of identity) would have made it an offence to disclose the identity of any woman who had had an abortion, sought advice or information on abortion or given or been summoned to give evidence in criminal proceedings under the 1967 Act or under the Bill. This the committee thought to be too wide ranging and it recommended that legislation be introduced which would restrict the publication of identity on the same lines as that contained in the recommendations of the

Report of the Advisory Group on the Law of Rape (the Heilbron Report).¹⁵¹ This would include any witness who has had, or who has been advised about an abortion which resulted in criminal proceedings. The Select Committee also rejected the need for clause 11 of the White Bill (onus of proof) on the grounds that it did not consider there was a sufficient case to breach such a fundamental rule of law. It did, however, recommend legislation which would allow senior police officers in the course of their investigations to apply to a judge to inspect or take copies of any records kept by 'approved' places, referral agencies, pregnancy advisory bureaux and pregnancy testing centres.

Clause 12 of the White Bill (penalties) was also criticised by the Select Committee as imposing too stringent penalties for contravention of the provisions of the 1967 Act or of the Bill. Instead it was recommended that proceedings could only be brought on summons and that there should be a maximum fine of £1,000 and provision made to extend the time limit for summary proceedings to three years from the commission of the offence. It further recommended that clause 13 of the White Bill (offences by corporate bodies) should be implemented viz. that, in the case of offences committed by corporate bodies, then responsible officers should also be liable.

151. Report of the Advisory Group on the Law of Rape, Cmnd. 6352, HMSO, London, 1975.

Two recommendations of the committee went beyond consideration of the White Bill. Firstly, it recommended that the law was unclear with regard to the procedure known as menstrual evacuation and that the 1967 Abortion Act should therefore be amended to provide that references in the Act to termination of pregnancy include acts done with intent to terminate a pregnancy if such exists. Secondly, the committee recommended that section 4 of the 1967 Act should be amended to make it clear that a conscientious objection may be on religious, ethical or other grounds and the proviso that the burden of proof shall rest with the person claiming it should be deleted as contrary to the general principle governing the burden of proof.

The recommendations of the Select Committee can thus be seen to be considerably more modest than the proposals contained in the White Bill. As David Steel put it, given its composition, 'the report could have been much more destructive'.¹⁵² Nevertheless, the report did not find favour with any of the major bodies concerned.¹⁵³ SPUC welcomed it as merely a first step, although Life thought it bitterly disappointing. ALRA, NAC and Co-ord attacked it as being unnecessarily restrictive. The medical profession was divided,¹⁵⁴ limited support being given to some of the recommendations but concern expressed over them when taken en masse as likely to make it harder for women to have safe legal

152. The Guardian, 29 and 30 July 1976 and The Evening News, 29 July 1976.

153. Ibid.

154. The Times, 6 August 1976.

abortion and others totally rejecting the committee's findings and calling for freer access to abortion.

(iii) William Benyon's Bill 1977

William Benyon, a Conservative M.P., drew fifth place in the private members' ballot in 1976 and announced his intention to introduce an amending Bill to the 1967 Act on the lines of the Select Committee report of July 1976.¹⁵⁵ Again the Bill was a long and complex measure containing some thirteen clauses. During the second reading debate,¹⁵⁶ Benyon explained his intentions and the purposes of his Bill. He had introduced it because of the mounting disquiet in the House about the working of the 1967 Act; as a response to the recommendations of the Select Committee that there be immediate legislation on certain matters relating to abortion; to ensure that the specific recommendations contained in the Select Committee report found their way into the statute book; and because the Government's legislative programme was such as to preclude any consideration of the Select Committee report during the current session so that a private member's measure was necessary to provide that opportunity for discussion. He stressed that he intended to follow closely the recommendations of the Select Committee report and added:

155. The Times, 22 December 1976.

156. Hansard H.C. vol. 926 cols.1783-1896.

... if I have strayed beyond the recommendations ... in any respect, that is entirely inadvertent ... Any erros can be remedied in Committee.¹⁵⁷

His central concerns were to remedy the abuses still in existence despite the administrative action taken by the DHSS and by so doing he hoped to remove the worst exploitation of women in the private sector and to afford greater protection to doctors and nurses in the performance of their tasks. Moreover, one of his important aims was to reduce the upper time limit for legal abortions to twenty weeks gestation.

The Bill incorporated very largely the recommendations of the Select Committee¹⁵⁸ with four main exceptions in clauses 1, 2, 6 and 7 where it exceeded, on a strict comparison, those recommendations. It is probably useful to clarify this latter point given that the ostensible reason for the Bill was said to be the implementation of the Select Committee report. In clause 1 an upper time limit of twenty four weeks was imposed as an exception to the rule of twenty weeks for foetal abnormality, but the Select Committee did not stipulate any such limitation to the exception. In clause 2 no reference was made in the Benyon Bill to the Select Committee's recommendation that the qualifications of registered medical practitioners applied only to those in private practice. In clause 6, the Bill went further than the Select Committee report by laying down the criteria on which licences were to be granted.

157. Ibid. col.1784.

158. See Appendix I(14) for full text of Bill.

Finally, clause 7 provided for no exception for emergencies under Section 1(4) of the 1967 Act which the Select Committee had recommended.

When the contents of this Bill are compared with the findings of the Lane Report, it can be seen that in seven clauses (1, 2, 3, 5, 7, 8, and 9) the Bill goes beyond the recommendations of that committee, in addition to exceeding, in four clauses (1, 2, 6 and 7) on a strict comparison, the recommendations of the Select Committee.

During the second reading of Benyon's Bill it is again possible to discern the four positions described as prevailing in the second reading of the White Bill. In this instance, however, there were rather more voices asserting that abortion was solely a woman's concern and ought to be her decision alone, with correspondingly fewer asserting that abortion was always a sin which ought to be totally prohibited. Again, however, the majority of speeches reflected varying versions of the middle of the road position, supporting either the 1967 Abortion Act per se or the Benyon Bill per se.

The supporters of the Benyon Bill argued that abortion on demand existed in clear contravention of the intentions of Parliament when it passed the 1967 Act. Consequently abuses had arisen in the implementation of that Act, abuses which the DHSS had been unwilling or unable to curb. It had been slow to take administrative action until some necessary changes had been forced upon it by the Select Committee. Although it was

recognised that action had been taken on the basis of the recommendations contained in the interim report, nevertheless it was felt that administrative action was insufficient in itself and that legislation was required, in particular to deal with the private sector. The nature of the controls necessary to curb the gross abuses existing in that area were, it was argued, such that the Secretaries of State did not have sufficient powers to initiate without further legislation. Furthermore, it was thought likely that the first report of the reconstituted Select Committee was likely to be allowed to gather dust if it was left with the Government to take action.

The perceived abuses arising from the workings of the 1967 Act were the profits being made in the private sector, from which the charitable bodies were not exempt. The view was expressed that many of the charitable pregnancy advisory bureaux and referral agencies acted as little more than a 'funnel through which to channel women to abortion clinics',¹⁵⁹ which were under the same ownership and with the same personnel. A concern for women was expressed in the argument that if control over the private sector was tightened then some of the worst exploitation of women would cease. In addition, it was thought extremely unlikely that counselling was unbiased where financial links existed between advisory bureaux and abortion clinics.

159. Hansard H.C. vol. 926 col.1844.

A further argument was that there was a pressing need to protect doctors and nurses who had objections, not necessarily based on religious beliefs, to performing or assisting in abortion operations and that they had been subjected to intolerable pressures since the passing of the 1967 Act. Again it was stressed that abortions were dangerous; that they caused sterility; increased the incidence of ectopic pregnancy; increased the risk of future spontaneous abortion; and caused untold mental distress to all women save those who were of 'a rather tough fibre'.¹⁶⁰ It was also suggested that in view of the number of couples wishing to adopt children women ought to be informed that abortion was not the sole solution to an unwanted pregnancy. Finally, considerable stress was placed on the view that the Bill was not a restrictive measure; it did not seek to alter the criteria on which legal abortions were available; nor did it attempt to return to the pre-1967 position. Instead the Bill was described as being a compromise measure which fell far short of the extreme provisions contained in its immediate predecessor and was designed to achieve a more equitable working of the 1967 Act.

The supporters of the 1967 Act argued that the Bill was badly drafted and had enormous implications, if enacted, in its likely effect. It was stressed that only if the Bill was considered in its entirety was the real purpose of its sponsors clear. Some of its clauses, if considered separately,

160. Ibid. col.1861.

appeared reasonable but nevertheless, when taken together, showed that the intention of the Bill was to restrict the numbers of legal abortions performed and make it more difficult for women to obtain safe abortions quickly. Consequently the dangers to women would be increased and many would once more turn to backstreet abortionists.

It was pointed out that since the passage of the 1967 Act, many other countries had passed legislation to allow therapeutic abortion and that many had passed laws allowing such abortion on wider grounds than those encompassed in the 1967 Act. If this Bill was passed then Britain would lag behind most other civilised countries. They argued that most of the abuses had been eradicated; that the DHSS had taken administrative action as a result of the interim report; and that time was needed to assess the effect of that action before the need for legislation was further considered. It was pointed out that only one per cent of abortions were carried out above twenty weeks gestation and therefore there was no need to reduce the upper time limit since those cases were the exceptions allowed in the clause as drafted. The inclusion of the charitable bodies in the provisions regarding the private sector was deprecated. They were seen as being necessary to augment the inadequate facilities of the NHS and were thought to offer skilled and efficient services. Finally, it was argued that any enabling legislation required the co-operation of those who would implement its provisions and, in this case, such co-operation was not forthcoming since the medical profession had placed its support

firmly behind the retention of the 1967 Act and regarded the proposed measure as an unwarranted interference with medical freedom and judgement.

Those who argued that abortion was a woman's right were prepared to support the 1967 Act in the face of an attempt to amend it on the ground that they did not wish to see further restriction. It was suggested that 'this male-dominated chamber is constantly considering anti-women measures' and that 'the kind of thing we ought to be debating is ... a Bill to amend the 1967 Act by giving women the right to choose'.¹⁶¹ It was asserted that:

... it is time that they accepted the fact that women, and only women, have the right to decide what is to happen to their bodies, and have the right to control them and their own lives.¹⁶²

The Bill was described as seeking to degrade women and to deprive them of their rights. The real abuse was the inadequacy of NHS facilities which forced women into the private sector, but the Bill attempted to restrict the activities of that sector and would thus cause nothing but hardship to women. It was therefore 'immoral, irresponsible and unthought out and ought to be thrown out'.¹⁶³

There were few voices raised in outright opposition to all abortion on principle. One, Stanley Cohen, a Roman Catholic Labour M.P., did state that:

I may not agree with the Bill in its totality because it does not go as far as I would like it to go ... but

161. Ibid. col.1847.

162. Ibid. col.1848.

163. Ibid. col.1855.

if we can introduce any amendment to the existing legislation that permits us to consider the very important question of life, I shall support it.¹⁶⁴

Another, David James, a Roman Catholic Conservative, stressed his view that:

... abortion equals taking an innocent life and taking an innocent life is murder.¹⁶⁵

He further warned that the Bill ought to be supported for what pro-abortionists wanted was:

... the destruction of Judaeo-Christian society and civilisation. To destroy it [they] must destroy the family and destroy it at its weakest point, the unborn child.

Roland Moyle, Minister of State at the DHSS, spoke in his personal capacity and stressed he was not putting a Government view. He stated that his department had progressively tightened and extended its control of the private sector, so that the abuses which had given rise to considerable concern in the early 1970s had been brought progressively under control. The situation was kept under constant review and much of what had been said by the sponsors of the Bill was no longer applicable or was totally misrepresented or ill-founded. The inclusion of the charitable bodies in the provisions regulating the private sector gave rise to particular concern for he thought their existence had contributed to the general improvements occurring in the private sector and

164. Ibid. col.1878.

165. Ibid.

moreover they were already closely supervised. He argued that what was needed was not legislation but a period of legislative inactivity so that the changes effected by recent administrative action could be assessed and considered. He advised that he personally would vote against the Bill.

The Bill was given a second reading by a vote of 170 to 132, a greatly reduced majority compared with that obtaining on the White Bill. A move to commit the Bill to a Committee of the Whole House was defeated, the vote being 137 to 109, and the Bill was sent to Standing Committee C.¹⁶⁶

The Benyon Bill was low in the queue for Standing Committee C, there being four Bills ahead of it. However, one Bill was withdrawn and another moved to another committee so that consideration of the Benyon Bill came sooner than anticipated and thereby increased its chances of completing its parliamentary stages before the end of the session. The first two sittings of the committee reveal the intentions of those members opposed to the Bill, for they were devoted entirely to arrangements regarding the scheduling of the committee's meetings. In the event, Benyon and his supporters were able to use their majority strength on the committee to arrange virtually round the clock sittings on three days a week instead of the normal once weekly morning session.

The opponents of the Bill were determined to 'filibuster'

166. See Official Reports of Standing Committee C; 22 June 1977, 29 June 1977, 5 July 1977, 6 July 1977, 7 July 1977, 12 July 1977.

it out¹⁶⁷ and its supporters were determined, after obtaining the extra sittings, to keep debate as short as possible. On 8 July Benyon began using the unwritten rule restricting discussion of amendments in committee to three hours, and in doing so broke another unwritten rule that ministers' speeches are not interrupted for a division or indeed that ministers are always called to speak if they have so indicated. Such actions led to the tabling of motions of no confidence in the committee's chairman.¹⁶⁸ The opponents were restricted in their attempts at filibustering when two of their members, Renée Short and Maureen Colquhoun, left for the United States after the first sitting on a fact finding tour for the Social Services Select Committee and were not replaced when the chairman refused to waive the rule that, once a committee has met, discharge can be for medical reasons only. Their departure meant that the four remaining opponents of the Bill had to talk for something like fifteen hours each to keep up their filibuster and moreover that the supporters of the Bill were always able to defeat amendments despite the non-appearance of Mrs. Winifred Ewing, an SNP M.P., at any sitting of the committee.

The decisive factor in the Bill completing its committee stages before 15 July, the last day for private members' business in the Commons, was Benyon's decision to ask leave to withdraw

167. See reports in The Guardian, 30 June 1977, 7 July 1977, 8 July 1977 and 14 July 1977.

168. See The Guardian, 8 July 1977.

clauses 7 to 11 of his Bill. Although his opponents insisted upon discussing each clause separately, nevertheless Benyon's actions did succeed in cutting the proceedings, for all the debating was done by his opponents. The committee was therefore able to complete its work in time for the Bill to be printed for report on 15 July.

Although the committee stages were complete it was unlikely that the Bill would pass through its report stages on 15 July for it was sixth in line for debate, and to succeed would need extra time granted by the Government, which was divided on the Bill. It is known that at least one attempt was made by ministers to arrange a compromise.¹⁶⁹ They had offered to help the Bill through the Commons but only if both sides agreed to certain amendments. The most important proposals were to raise the maximum time limit for abortion operations from twenty to twenty two weeks from the presumed moment of conception and to exempt the charitable bodies from the regulations proposed in the Bill for pregnancy testing and advisory centres. It is also thought that the government wanted abortion on request during the first twelve weeks of pregnancy in return for reducing the upper time limit for legal abortion from twenty-eight weeks and an extension of the conscience clause to cover objections other than those based on religious beliefs. However, the Labour women M.P.s rejected the move to compromise and it is thought that Benyon's supporters, although

169. See The Guardian, 15 July 1977.

not Benyon himself, refused to accept abortion on request. The Government refused to grant the necessary time on the grounds that there were strong feelings on both sides and therefore the matter must be dealt with in accordance with the normal procedures of the House. The Benyon Bill thus fell with the end of the parliamentary session.

9. Conclusion

To sum up, the period between 1975 and 1977 was one of intense parliamentary action parallel to that existing between 1965 and 1967. ALRA was taken over by young, politically inexperienced people who were unfamiliar with the mechanics of the legislative process and who did not organise their forces (at least initially although this began to change towards the end of 1976) as well as their predecessors. SPUC on the other hand had become a much more tactically effective organisation than before. It was not until Co-ord was established that there existed a really effective lobbying pro-abortion body. The concern generated by the media in the earlier period (1968-1974) over the abuses arising from the working of the Act had continued, due largely in part to the slow reaction of the DHSS to the findings of the Lane Committee. A great deal of publicity was given to Babies for Burning which had been published in late 1974 and further increased the disquiet felt over the abuses.

These factors are reflected in the extremely large vote on the second reading of the White Bill, which itself further focused attention on the abortion issue. Most of the leading newspapers came out against the Bill. Public opinion polls tended to show support either for the retention of the 1967 Act or its amendment to make abortion easier to obtain. Moreover, an increasing body of organised public opinion was for the retention of the 1967 Act, as evidenced by the many resolutions passed during this period.¹⁷⁰ The churches were disturbed generally over the abortion issue but apart from what might be thought an uncanny alliance between the Roman Catholic Church and the Church of Scotland in support of the amending Bill, opinion was deeply divided as to how best to deal with that concern. For the first time the medical profession was united and wished to retain the 1967 Act subject to some minor points. As a result of the interim report of the Select Committee the DHSS moved quickly to take administrative action on its recommendations. Babies for Burning was largely discredited during the later part of this period.

These factors combined to suggest why the majority vote on the Benyon Bill was very much reduced from that in support of the White Bill. There are signs too that M.P.s were becoming tired of being besieged by letters on abortion,¹⁷¹ as one M.P. stated in the survey conducted by The Sunday Times, 'the

170. As is evidenced by previous sections of this chapter.

171. See The Survey of M.P.'s opinions on Abortion by The Sunday Times, 26 February 1977.

next M.P. who tries to amend the Abortion Act will get castrated'.¹⁷² Whether the Benyon Bill would have passed its report stage and third reading or got through the House of Lords in its same form is a matter for speculation but it does appear that the desire of M.P.s, at least the members of the 1974-79 Parliament, to legislate on abortion is diminishing, a fact evidenced by the further decrease in the majority vote in favour of amendment on the Bill introduced by Bernard Braine early in 1978 which passed its second reading by only six votes.¹⁷³ In the event, the Government's decision not to grant extra time was decisive to the outcome of the Benyon Bill and that decision was very largely influenced by the intensity of feeling generated on both sides of the abortion controversy, so that the Government did not wish to stand accused of partisanship on an issue which was regarded as one of conscience.

172. Ibid.

173. See The Scotsman, 22 February 1978.

CHAPTER SIX

THEORETICAL AND PRACTICAL PERSPECTIVES ON THE EMERGENCE OF LAW

1. Introduction

The previous chapters have provided a narrative history of the social, political and legal aspects of the changing nature of the abortion controversy between 1936 and 1977. As stated in the Introduction to this thesis, the production of this comprehensive socio-political history of abortion law reform has a subsidiary purpose. It allows general theories of law emergence to be subjected to empirical examination and their relevance to this issue assessed. Before making any such assessment, it is necessary to derive a clear understanding of what such theories purport to explain.

The first part of this chapter will provide therefore a critical review of general theories of law emergence. The second section will examine the four substantial existing accounts of abortion law reform to ascertain if these works are informed by or adhere to any one general theoretical position and to compare their conclusions with that of this study. Finally, the chapter ends by recognising that the legislative process per se is a key determining factor in whether or not laws actually come into being and therefore comprises an examination of the rules and practices governing the legislative arena in addition to providing an account of the recognised sources of legislation.

2. General theories of emergence of law

There are several theories of the emergence of criminal law and in recent years there have been a substantial number of case studies undertaken into the origin of specific criminal laws which help evaluate the applicability of the theories advanced concerning the social origins of criminal legislation.¹

Theories which have been advanced to explain the emergence of law tend to follow general theories of society, broadly distinguishable into order and conflict models of society. The order model stresses cohesion, integration, stability, a shared culture. Any disagreement that may arise is viewed as resolvable by mutually agreed processes. Conflict theory on the other hand sees society as unstable, involving continuous political struggle between conflicting groups. In consensus theory, criminal law is explained as a reflection of society's customary beliefs; it is a body of rules which reflect the general value consensus of society. In conflict theory, the criminal law is seen as a set of rules which come about as a result of the struggle between those who are ruled and the ruling class whose interests are always protected and enhanced in law. In between these two extreme positions are a number of case studies of

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1. See, for example: Hall, J.: *Theft, Law and Society*, Bobbs-Merril, Indianapolis, 1952; Becker, H.: *Outsiders: Studies in the Sociology of Deviance*, Free Press of Glencoe, New York, 1963; Chambliss, W.J.: 'A Sociological Analysis of the Law of Vagrancy', *Social Problems*, Vol.12 (1964) pp.67-77; Carson, W.G.: *Symbolic and Instrumental Dimensions of Early Factory Legislation: A Case Study of the Social Origins of Criminal Law*. In Hood, R.(ed.): *Crime, Criminology and Public Policy*, Heinemann, London, 1974; Gunningham, N.: *Pollution, Social Interest and the Law*, Martin Robertson, London, 1974; Gusfield, J.: *Symbolic Crusade: Status Politics and the American Temperance Movement*, University of Illinois Press, Urbana, 1963; Paulus, I.: *The Search for Pure Food: A Sociology of Legislation in Britain*, Martin Robertson, London, 1974.

particular laws which point to the criminal law emerging as a result of the activities of particular segments of society concerned over specific issues at particular times.

3. Consensus theory of law emergence

In consensus theory, certain acts are defined as criminal because they offend the moral beliefs of the members of society. The law is seen to represent those values which are regarded as being fundamental to social order and which it is in the public interest to protect. The formal mechanism of law is resorted to when behaviour goes beyond the tolerance limits of society. Crime is then seen as establishing the limits of the community's tolerance and thus creates a tighter bond among all members in the community and increases moral solidarity. Criminal behaviour is seen as the result of inadequate socialisation and is more likely to be indulged in by the lower classes, since their agencies of socialisation are thought less likely to work effectively.

There are problems with this approach in that in complex modern industrialised societies it is extremely difficult to point to a monolithic set of values (this may also be so in simpler societies but that is not the present concern). One is left asking why the law is used to uphold some moral values and not others; at what point is behaviour regarded as so offensive to morality that the law is called into action rather than informal mechanism; at what point are certain values seen as so

fundamental to the public interest and order that the disintegration of society is feared if the law is not used to uphold them;² why are some laws 'more honoured in the breach than the observance'; why is considerable moral opprobrium nevertheless attached to quite legal activities?³

Erickson's study of the Puritans in New England⁴ is one of the few examples of an attempt to test consensus theory and in particular the idea that crime leads to increased moral solidarity. Erikson describes three major crime waves in the Puritan settlement within sixty years. Briefly, he concluded that the crime waves were created by the community in order to help establish the moral boundaries of the settlement. Yet, as Chambliss⁵ notes, that there were three such waves in a relatively short period suggests that each wave failed in reinforcing moral solidarity. Moreover, on Erikson's evidence, it does not seem that the crime waves stemmed from a moral crisis but were in fact created in order to resolve the power struggles within the community; for example, the Quaker movement was gaining in popularity within the settlement and posing a threat to the authority of those who controlled the colony and it was therefore defined as criminal to be Quaker.

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2. For a discussion of these points see: Hart, H.L.A.: *Law, Liberty and Morality*, Oxford University Press, London, 1968 and Lord Devlin: *The Enforcement of Morals*, Oxford University Press, London, 1968.
 3. Downes, D.: 'Praxis Makes Perfect. A Critique of Critical Criminology', in Downes, D. and Rock, P. (eds.): *Deviant Interpretations*, Martin Robertson, Oxford, 1979.
 4. Erikson, K.T.: *Wayward Puritans: A Study in the Sociology of Deviance*, Wiley, New York, 1966.
 5. Chambliss, W.J.: Introduction to "Whose Law? What Order?" op.cit.

At the time of the witchcraft trials, Erikson also notes that the community was torn by internal quarrels between the magistrates and clergymen who ruled the settlement and that the colony itself was threatened by England in that King Charles II revoked the colonial charter, sent a Royal Governor to protect his interests and ordered the establishment of an Anglican Church. The witchcraft trials created a diversion and served to obscure the disputes which were rife among the leaders of the community. When the persecutions got out of hand and led to accusations of witchcraft amongst the rulers themselves, the rules of evidence were changed and the trials died away. These factors do suggest that the crime waves, far from increasing solidarity, pointed to inherent conflict within the community and the use of the criminal law by those who ruled to maintain that position.

4. Conflict theory of law emergence

Within conflict theory there are various traditions which emphasise conflict to varying degrees, for example, interest group theory vis-à-vis Marxist theory, but, for the moment, the extreme form will be discussed. In conflict theory, as was mentioned earlier, criminal law is seen as a set of rules which emerge as a result of the struggle between those who are ruled

and the rulers who are the owners of the means of production. The outcome of that struggle is that the interests of the rulers are always maintained and protected and the laws are enforced against those who are trying to overthrow the ruling class. The criminal law is not a reflection of objective values but is laid down in the interests of the ruling class and results from the conflicts inherent within class-structured societies:

Because the law is the outcome of processes of definition which emanate from the powerful and, as a result, is so cast as both to secure their interests and minimise the likelihood of their incrimination it cannot be taken as a neutral⁶ arbiter of conforming and aberrant behaviour.

Criminal behaviour is seen to result either from the struggle between classes, being the expression on the part of the ruled of their alienation, or to stem from and represent competition for control of the means of production. Criminal labels are applied, whether or not the behaviour would otherwise be tolerated by the society at large, if it is in the interests of the ruling class so to do.

The existence of crime is seen as diverting the lower classes' attention from the exploitation they experience toward and against other members of their class. It is used by the ruling class to produce 'false consciousness' among the ruled by making them think that their interests are the same. Any apparent moral consensus on some issues is mistaken; such

6. Downes, D.: 'Praxis Makes Perfect. A Critique of Critical Criminology.' op.cit., p.3.

'consensus' is the result of the false consciousness which is produced:

"Facts" are a product of the work of those with the power to define what is taken to be "factual" and of the willingness of those without such power to accept the given definitions.

Nor is any credence given to the view that within the ruling class itself there may be diverse and conflicting interests. Superficially, it is granted, there may appear to be differences on some issues but what is ignored is that they all work within a common framework, a framework within which they all wish to work and compete. Their primary interest is to preserve that framework.⁸ So too is any possibility of compromise in law-making denied. This, we are told, 'is a myth perpetuated by a pluralistic model of politics'.⁹ This view of the criminal law being the outcome of a class struggle has been further developed by the radical criminologists who started by advocating analyses of:

... the structured inequalities in power and interest which underpin the processes whereby the laws are created and enforced.¹⁰

Their essential position is of course that capitalist society is criminogenic:

... the processes involved in crime creation are bound up in the final analysis with the material basis of contemporary capitalism and its structures of law ... Critically we would assert that it is possible to envisage societies free of any material

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7. Taylor, I., Walton, P. and Young, J.: The New Criminology: for a social theory of deviance, Routledge and Kegan Paul, London, 1973, p.26.
 8. Quinney, R.: Crime Control in Capitalist Society: a critical philosophy of legal order. In: Taylor, I., Walton, P. and Young, J.: Critical Criminology, Routledge and Kegan Paul, London, 1975, pp.194-195.
 9. Quinney, R.: The Social Reality of Crime, Little and Brown, Boston, 1970, p.39ff.
 10. ~~Ibid.~~ ^{op.cit.}, p.168. Walton, P. and Young, J.: The New Criminology. op.cit., p.168.

necessity to criminalise deviance. Other controls on "anti-social" behaviour (and other definitions of what that might constitute) can be imagined, and, from the point of view of a socialist diversity, would be essential.¹¹

From this point they further argue that the task is to create a criminology committed to the abolition of inequalities of wealth and power.¹²

A case of the emergence of a criminal law designed to protect the interests of the economic élite is that of the laws of vagrancy, according to Chambliss in a well-known study of those Acts.¹³ He explains the emergence of these laws by the need on the part of the landowners to have an adequate supply of cheap labour. The Crusades had necessitated the landlords' raising money which they did largely by selling serfs their freedom. The serfs then fled to the towns which were growing into commercial and trading centres at that time. The Black Death decimated England's labour force and thus destroyed the large pool of labour on which the manorial system was based. The effect of this was to raise the wages of freemen which exacerbated the condition of the remaining serfs, so that even more sought refuge from depressed living conditions by flight to the developing towns. The solution for the landowners was the Vagrancy Acts which were designed to force labourers to accept employment at low wages to ensure an adequate supply of cheap

11. Taylor, I., Walton, P. and Young, J.: *Critical Criminology*, op.cit., p.20.

12. For a discussion of the issues raised by radical criminology, see Downes, D. and Rock, P. (eds.) op.cit., and Rock, P., *The Making of Symbolic Interactionism*, Macmillan, London, 1979.

13. Chambliss, W.J.: *The State, the Law, and the Definition of Behaviour as Criminal or Delinquent*. In: Glaser, D. (ed.), *Handbook of Criminology*, Rand-McNally, Chicago, 1974, pp.7-43, and 'A Sociological Analysis of the Law of Vagrancy', op.cit.

labour. In 1349 when the first vagrancy statute was passed, its wording made its intention quite clear:

Because that many valiant beggars, as long as they may live of begging, do refuse to labour, giving themselves to idleness and vice, and sometimes to theft and other abominations; it is ordained, that none upon pain of imprisonment shall, under the colour of pity or alms, give anything to such which may favour or presume to favour them towards their desires; so that thereby they may be compelled to labour for their necessary living.

Moreover it was further ordained that:

Because great part of the people, and especially of workmen and servants, late died in pestilence, many seeing the necessity of masters, and great scarcity of servants, will not serve without excessive wages, and some rather willing to beg in idleness than by labour to get their living; it is ordained, that every man and woman, of what condition he be, free or bond, able in body and within the age of three-score years, not living in merchandise nor exercising any right, nor having of his own whereon to live, nor proper land whereon to occupy himself and not serving any other, if he in convenient service (his estate considered) be required to serve, shall be bounded to serve him which shall him require ... And if any refuse, he shall on conviction by two true men ... be committed to gaol till he find surety to serve. And if any workmen or servant, of what estate or condition he be, retained in any man's service, do depart from the said service without reasonable cause or license, before the term agreed on, he shall have pain of imprisonment.

As feudalism declined and commerce and trade ascended, new social problems were perceived. One of the most pressing problems was seen as ensuring the safe transportation of goods. Consequently, the Vagrancy Acts underwent changes in application and formulation. The emphasis was now placed upon criminal activities and especially the suspicion of such activities. The law was not now so concerned with those who refused to work but with vagabonds and rogues and in particular 'roadmen'. This

is exemplified by the statute passed in 1571:

Whereas divers licentious persons wander up and down in all parts of the realm, to countenance their wicked behaviour; and do continually assemble themselves armed in the highways, and elsewhere in troops, to the great terror of her majesty's true subjects, the impeachment of her laws, and the disturbance of the peace and tranquility of the realm; and whereas many outrages are daily committed by these dissolute persons, and more are likely to ensue if speedy remedy be not provided.

At a general level, one criticism which can be made of the view which sees crime as an inevitable derivative of capitalist society (and this perhaps applies particularly to radical criminology) is that 'proclamation alone is not sufficient'.¹⁴ The case has yet to be substantiated:

The premise that crime derives from the material facts of life in propertied societies rests on a set of unexamined assumptions about crime and its control.¹⁵

Moreover, the view that not only is it possible to envisage a truly socialist (and therefore crime-free) society but also that this should be the task of the criminologist is likewise insufficiently developed, for:

... [there is no] statement of the properties which a truly socialist (and crime-free) society would possess ... in the case, as it has so far been stated, of critical or radical criminology, the entire intellectual construction rests on the postulates that capitalist society is essentially criminogenic, and that only by the total repudiation of the ethic of possessive individualism on which it rests, can "true" equality and "socialist diversity" - the prerequisites for a "crime free" society - be attained.¹⁶

14. Rock, P.: 'The Sociology of Crime, Symbolic Interactionism and Some Problematic Qualities of Radical Criminology' in Downes, D. and Rock, P. (eds.), op.cit., p.80.

15. Downes, D., op.cit., p.8.

16. Ibid., pp.5-6.

More specifically a criticism which can be made of the model which sees all criminal law as protecting the interests of the economic élite is that there are in existence laws which apparently curtail the interests and activities of this group.¹⁷ The Sherman Anti-Trust Laws in the United States, laws regulating the administration of food and drugs, pollution and health and safety at work are some examples of this type of law. Although superficially these laws might appear to support the view that the interests of the economic élite are not all-pervasive in the creation of criminal laws, evidence does exist that the effect of such laws as a restrictive force is more apparent than real. Both Carson¹⁸ and Kolko,¹⁹ for instance, provide cases in which those apparently threatened by the enactment of laws actively participated in their promotion, because, by means of their participation, they could ensure more limited compromise measures. Moreover, in both examples, the encouragement came from large companies who saw legislation as providing an opportunity to curtail the activities of smaller companies in competition with them.

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17. See e.g. points made by Carson, W.G.: *The Sociology of Law and the Emergence of Criminal Law*. In: Rock, P. and McIntosh, M. (eds.) *Deviance and Social Control*, Tavistock Publications, London, 1974, pp.67-91 and Chambliss, W.J.: *The State and Criminal Law*. In: Chambliss, W.J. and Mankoff, M., *op.cit.*, pp.66-106.
 18. Carson, W.G.: *Symbolic and Instrumental Dimensions of Early Factory Legislation*, *op.cit.*
 19. Kolko, G.: *The Triumph of Conservatism: A re-interpretation of American History 1900-1916*, Free Press of Glencoe, New York, 1963 and *Rail Roads and Regulations*, Princeton University Press, Princeton, 1965.

Our attention is also drawn to the fact that not only is legislation itself not always as restrictive or inimical as might be thought but that there may in fact also be ineffective enforcement: Carson found that the number of criminal prosecutions instigated under the Factory Acts was in no way comparable to the number of officially recorded violations.²⁰ Indeed, Aubert²¹ in his study of economic regulation, the 'Housemaid Laws', found that barriers to efficient implementation were built in at the legislative stage itself by the very nature of the enforcement machinery provided. This he explains as a reflection of a compromise measure to assuage the feelings and interests of two opposing groups: the labour movement and certain government agencies who had their victory in the enactment of the legislation and certain business groups who suffered no defeat by ensuring that the legislation would not be enforced too rigorously. Aubert's study is important in its recognition that there was not one élite which 'won' but, in this case, two powerful groups, one ascendant and one descendant (in the power they wield) neither of whom 'won' or 'lost' totally, in that a compromise solution was found. This points to the possibility that there may be various groups, all with some degree of power, which achieve different objectives in the legislative and enforcement arenas. One group may obtain recognition of its interests in securing the passage of legislation, may even influence its drafting to some extent,

20. Carson, W.G.: White Collar Crime and the Enforcement of Factory Legislation, (1970) *British Journal of Criminology*, 10(4), pp.383-98 at 391.

21. Aubert, V.: White Collar Crime and Social Structure, (1952) *American Journal of Sociology*, Vol. 58(3), pp.263-71.

but another may influence the enforcement of the law or even secure its amendment at a later stage. The importance of power and conflict is not denied if one admits this possibility but discerning the exercise of power becomes problematic in the recognition that during the different stages of formulation, enforcement, and possible amendment, power and prestige may shift from one interested group to another.

Additional criticisms can be made of the position which views criminal law merely as the reflection of the interests of the economic élite. The most obvious of these is that there is a substantial consensus about some criminal laws, especially those forbidding crimes against the person, which cannot be seen as protecting the interests of an economic élite more than any other group. Such observations have led some conflict writers to acknowledge that their model must allow for some consensus.²² In addition, what is often ignored is that consensus may in fact be established as a result of passing a law. As was noted earlier, the fact that formal mechanisms of law are resorted to in some instances suggests that conflict has arisen, that the law came about as a result of that conflict. However, once the conflict over behaviour has been 'resolved' by a law which lays down the desired behaviour then consensus may thereby be established.

22. Cf. Chambliss, W.J. *The State, the Law and the Definition of Behaviour as Criminal or Delinquent*, op.cit.

One important point, which has been inadequately drawn out by most writers in this area perhaps with the exception of Carson,²³ is that the effectiveness of legal regulations rarely rests solely upon the threat of physical sanctions but also upon a general attitude of respect for law and for a particular legal system. Moreover, this attitude itself is to a large extent determined by moral approval of law as embodying social justice. The use of law as an instrument of social control will be more effective and enduring if individuals not only conform to socially prescribed rules of conduct but, as members of society, accept them as their own. Weber²⁴ pointed out the need for legitimization of any system of domination but this question has not been given sufficient recognition by most writers embracing the conflict perspective of law creation. As Carson notes there are 'self defeating properties of criminal law when used merely as a coercive means to the end of acquiring and maintaining power'.²⁵ Or, as Thompson has recently stated:

Most men have a strong sense of justice, at least with regard to their own interests. If the law is evidently partial and unjust, then it will mask nothing, legitimise nothing, contribute nothing to any class's hegemony. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem just.²⁶

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- 23. Carson, W.G.: The Sociology of Law and the Emergence of Criminal Laws, op.cit., p.83.
 - 24. Rheinstein, M.: Weber on Law and Economy in Society, Simon Schuster, New York, 1967.
 - 25. Carson, W.G.: The Sociology of Law and the Emergence of Criminal Laws, op.cit., p.83.
 - 26. Thompson, E.P.: Whigs and Hunters: The Origin of the Black Act , Allen Lane, London, 1975, p.263.

5. Pluralist theory of law emergence

The essential position of a 'pluralist' approach is that there exists a multiplicity of groups in society holding different values and goals and seeking their recognition in legislation.²⁷ None of these groups is dominant; all compete with one another for the attention of the legislature; any alliances which are formed are dependent upon the nature of the specific issue at hand. Under this approach, the role of public opinion as an influence upon the nature and content of legislation is then seen as 'constantly expressing itself not only through public discussion in the press and radio but also through pressure groups and professional associations'.²⁸

Once again, however, there is a failure to define what constitutes a social problem or to explain why one area of behaviour, as opposed to another, is viewed as problematic, requiring attention, or to ask 'who regards the situation as a problem?' A criticism which has been made of this approach is that it tends to assume that groups are of equal power and have equal access to, for example, the legislature and the mass media:

The objection that is voiced against such a view, of course, is that while it does show what goes on in situations, its astructural location of such situations neglects the real issues ... Ultimately, as it builds up into a cumulative portrait of the society, [it] ... has a close affinity with the pluralist model of power - with masses of apparently equally weighted pressure groups vying and wrestling for control.²⁹

27. For a discussion see Chambliss, W.J. and Seidman, R.B.: *Law, Order and Power*, Addison-Wesley, Reading, Mass., 1971, p.17 et seq.

28. Friedmann, W.: *Law in a Changing Society*, Penguin, Harmondsworth, 1972, p.22.

29. Plummer, K.: *Misunderstanding Labelling Perspectives*, in Downes, D. and Rock, P. (eds.) op.cit., p.115 (where he goes on to answer this objection).

But again there is no conclusive evidence that this is so and it may be that some groups are indeed more powerful than others, do have more resources (in many senses) and are better able to influence and maintain their influence over a longer period.

Notwithstanding these reservations and, in particular, the need to examine the relative power of various groups, there are studies, a considerable number of which do, in fact, tackle the power issue, which suggest that there are groups other than economic elites which do influence and determine criminal laws. Dickson's study of the emergence of drug laws showed the importance of law enforcement bureaucracies to criminal law emergence³⁰ and Sutherland's study of sexual psychopath laws points to the professional role of psychiatrists in defining criminal legislation.³¹ Both of these works illustrate the role of vested interests other than economic elites in the process of legislation.

Other studies, however, show that groups other than those with a vested interest do on occasion affect legislation and that public opinion, when expressed through organised groups acting on the legislature, can in fact have considerable effect. One example of this is Becker's study of the American 1937 Marijuana

30. Dickson, D.J.: Bureaucracy and Morality: an organisational perspective on a moral crusade, *Social Problems*, Vol. 16, pp.145-56.

31. Sutherland, E.: The Diffusion of Sexual Psychopath Laws, (1950) *American Journal of Sociology*, Vol. LVI, pp.142-148.

Tax Act. He uses the term 'moral entrepreneur' to describe those people who seek to bring about legislation which will eliminate social evils as they perceive them and have no direct interest, in a material sense, in the change they would like to effect. He says:

Whenever rules are created and applied we should be alive to the possible presence of an enterprising individual or group. Their activities can properly be called a moral enterprise for what they are enterprising about is the creation of a new fragment of the moral constitution of society, of its code of right and wrong.³²

It seems even with this type of concern, however, that the 'public opinion' which is spoken of is middle class opinion and that interest, albeit not apparently material, cannot be excluded. Becker says that:

Moral reforming of this type suggests the approach of a dominant class toward those less favourably situated in the economic and social structure. This means they add to the power they derive from the legitimacy of their moral position, the power they derive from their superior position in society.³³

This ~~theme~~ of a dominant group augmenting its status through legislation that incorporates its values is also evident, for example, in Gusfield's analysis of the Prohibition Laws.³⁴ Again, the role of material interests may be seen, if not as insignificant,

32. Becker, H.S.: *Outsiders: Studies in the Sociology of Deviance*, op.cit., p.145.

33. Ibid., p.149.

34. Gusfield, J.R.: *Symbolic Crusade: Status Politics and the American Temperance Movement*, op.cit.

at least as secondary, and reform can be seen to arise out of conflict over status aspirations and discontent among different social groups. The crucial idea is that political action can influence the distribution of prestige by the recognition of the values of the groups seeking change who are motivated largely by moral indignation and/or humanitarianism. Thus Gusfield says that, even if the law is not enforced, its passage has symbolic significance in that it settles a clash between two cultures, and enhances the prestige of the victors and degrades the losers, by the public support of the one conception of morality over the other.³⁵

Becker's study, in particular, may be criticised for his tendency to see the success of a moral crusade as inevitable. There may in fact exist various groups with differential definitions and objectives all seeking to influence the legislature. Aubert's study³⁶ is important, as was noted earlier, in its recognition of this fact. His study also indicates that Gusfield's analysis may be deficient in its conception of winners and losers for, as was also mentioned earlier, there may be no overall losers and winners but a compromise solution may be found. The recognition of the complexities of the legislative process has perhaps been most ably stated by Lemert who states that to understand the interplay of so many groups in the development of new legislation

35. Ibid., p.4.

36. Aubert, V.: op.cit.

requires a model of group rather than interpersonal interaction.³⁷ Moreover, he also endorses the view that laws may not reflect the interests or values of one group but instead may be the result of compromise between the values of opposing, strongly organised associations. The result of this compromise may however be, he says, 'a patchwork monster'.³⁸

One criticism, so far only referred to by implication, which has been made of pluralist theories by extreme conflict theorists goes further than the recognition that the question of the relative power of various groups should be given attention and that is that pluralism assumes that groups work within a value-neutral framework - the State. Despite the very real difficulties associated with this term, including the difficulties of definition,³⁹ we shall accept for present purposes that used by theorists who advocate this position viz. that the State is made up of various elements: the Government, the administration, the military and police, the judiciary, and the units of sub-central government.⁴⁰ These elements are seen to be controlled by the dominant economic class for:

In an epoch when so much is made of democracy, equality, social mobility, classlessness, and the rest, it has remained a basic fact of life in advanced capitalist countries that the vast majority of men and women

37. Lemert, E.: *Human Deviance, Social Problems and Social Control*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1972, p.20.

38. Ibid., p.57.

39. For a discussion of these issues see: Marshall, G.: *Constitution Theory*, Clarendon Press, Oxford, 1971, ch.II.

40. Miliband, R.: *The State in Capitalist Society*, Quartet Books, London, 1973, esp. Ch.3.

in these countries has been governed, represented, administered, judged and commanded in war by people drawn from other economically and socially superior and relatively distant classes.⁴¹

The State is seen as a weapon in the hands of the dominant economic group which is used to suppress the exploited class and protect the interests of the dominant group. Law, and especially criminal law, is seen as the ultimate means by which the State secures the interests of the ruling class:

Crime control becomes the coercive means of checking threats to the existing economic arrangements ... Crime control in the capitalist State is the concrete means⁴² for protecting the interests of the capitalist economy.

Yet this argument overlooks the fact that the various elements comprising the State may in fact be opposed on occasion, for example, at a simple level, the judiciary may rule in favour of an individual against an executive organ. Although the thesis of the unitary State expressive of dominant interests may be true, it ought to be regarded as problematic, requiring proof rather than assertion. It would have to be shown that each and every piece of law furthers the interests of one homogenous economic elite or at the very least, does not harm their interests. If it can be shown, however, that laws do exist which do not do this then the assertion that the State, however construed, is controlled always by the dominant economic class becomes suspect. To construct a theory of the nature of the capitalist state from a consideration of criminal law may also seem short-sighted. It is to ignore a whole area of law, and law

41. Ibid., pp.66-67.

42. Quinney, R.: Crime Control in Capitalist Society. In Taylor, I., Walton, P. and Young J.: Critical Criminology, op.cit., p.199.

which, on the face of it at least, appears more likely to regulate and maintain capitalist relations in respect to the means of production. However, to speculate too far on the nature of the State is not the concern of the present paper. Let it suffice here to say that the extreme view is much more problematic than is allowed by writers embracing that perspective.

6. A continuum in which to view law emergence

From the above review of general theories and existing case studies of particular laws, it would appear that each theory has been helpful to some extent in furthering our understanding of the emergence of laws yet each is convincing only in relation to specific types of issues. Consensus theory provides the most obvious explanation of laws regulating behaviour whose truly 'criminal' character is not controversial e.g. personal assault. Conflict theory aids our understanding of laws regulating activities which bear upon the power, influence and material interests held in common among privileged groups. Pluralist theory appears applicable to those issues which do not affect such privileged groups in a direct material sense but concern moral issues involving deep divisions of opinion even within the privileged group or groups whose existence conflict theory postulates. Each then provides a framework for interpreting some examples of law emergence but it remains true that there is still a need for generalisation to further understanding since no one theory so far advanced explains the emergence of all criminal laws and each, interpreted as a general theory, is confuted

by some of the evidence. To recognise their limitations, in short the fact that none is successful for all cases, is not to deny that each also contains illuminating aspects which further comprehension. This would suggest that a potentially useful task would lie in the construction of some sort of conceptual scheme which encompasses those illuminating aspects whilst overcoming the shortcomings of the major alternative theories of law emergence which have been outlined. Such a scheme would then permit the location of different laws on a continuum, their position being dependent upon which theory had most explanatory power for that particular example of law emergence.

The construction of such a continuum is not without difficulty however given the present form in which consensus, pluralist and conflict theories are postulated. Nevertheless, the evidence from the case studies suggests that modifications to the present formulations are required and it may be possible to suggest certain refinements which would facilitate the construction of such a continuum. It seems axiomatic that there is considerable consensus on some laws extant at any given point in time and also on the view that certain activities should remain outwith the ambit of formal legal restriction. This consensus is not however inconsistent with the existence either of a power elite^s or of a multiplicity of specialised ('pressure') groups which, although party to such general consensus as exists, are on other points concerned to pursue or sustain their own dominance or to promote issues or causes which are not consensual issues. If this point is conceded, a continuum can therefore be constructed between consensus and either conflict or pluralism. A continuum between

all three major theoretical positions requires a further concession however viz. that groups, however understood, do not necessarily always function cohesively for all purposes and that constituent members may function, for purposes outwith the particular concerns of the groups, as members of other collectivities. From the stance of conflict theory, therefore, refinement would be necessary to allow for the possibility that members of a power elite function as such only when the basis of their power is at stake while for other purposes they may be active as members of other groups whose membership does not conform to simple 'class' lines' of division. Similarly pluralist theory would require refinement to allow for the possibility that within the multiplicity of groups there may be constituent members who also form part of a power elite^s and act as such for the purpose of maintaining that power when necessary although for other purposes they function as members of other groups. Such modifications would then allow for the construction of a continuum between consensus, conflict and pluralism.

The review of existing case studies both suggests that modifications are required and that such a continuum could be a useful device for understanding the emergence of different types of law. At present the general theories appear to be at too general a conceptual level and too far removed from the explananda they purport to explain. Further case studies of the emergence of particular laws would probably not take us very far however in a search for a theory of law in general and its relationship to society. Apart from the danger of generalising from a particular law or even a set of particular laws and their emergence over a relatively short period of history, there is an additional danger. The case studies examine only the emergence of specific

laws and the social conditions of their emergence. As such they may be valuable in their own right by telling us something about particular laws of which we may previously have been unaware but a necessary step which they have not taken is to examine how particular laws relate to the whole legal system and interrelate with the societal institution or institutions they seek to regulate and, in turn, how that institution or those institutions fit into the overall social structure and how the overall structure of such laws or legal systems or social institutions changes over time. It is only by confronting these issues that a credible general theory could be devised with adequate explanatory power for the whole range of particulars which it embraces. No claim is made that the present thesis has accomplished this Herculean task.

7. Accounts of emergence of abortion law

As was indicated in the Introduction to this thesis, there have been four substantial accounts (prior to the present one) of various stages in the reform of abortion law. Unlike the present author, the writers concerned have not sought specifically to set their accounts in the context of theories of the emergence of laws, nor to give any direct critique of such theories. Nevertheless, it seems proper at this stage to review these four accounts with a view to establishing what (if any) implicit view they take on general questions about law emergence. The issue for this section of this chapter is as to the models of society and of law emergence implicitly present in the works reviewed.

Greenwood and Young assert that the analysis of the politics underlying the struggle for abortion law reform in the United Kingdom has remained shallow and cursory.⁴³ In a brief account of the passage of the 1967 Abortion Act they contend that the

43. Greenwood, V. and Young, J.: *Abortion in Demand*, Pluto Press, London, 1976, p.13.

legislation was a result of reformist political activity which they say took progressive demands and pegged them to the needs of the system. Reformist politics is defined as a belief in the idea that the social order can be adjusted piecemeal, that social progress can be achieved without fundamental change but by social engineering.⁴⁴ The central idea is that it was in the interests of the system as a whole to allow this reform.⁴⁵ Social problems, from the reformers' perspective, are seen to result either from individual personal inadequacy and/or 'unreasonableness' or from government oversight but do not stem from the very nature of societal organisation. 'Problem cases' are then seen as being at the peripheral or marginal edges of an essentially just society. The authors argue that in the 1960s three types of 'problem' were discerned: (a) the problem of the new poor, resulting from the decline of basic industries, who could be reintegrated into a 'caring' society by welfare provision; (b) the maladjusted such as juvenile delinquents who could be 'saved' by recategorisation from wilful culprit to sick victim; and (c) the problem of the wrongly stigmatised which could be solved by decriminalisation.⁴⁶

Abortion was then defined from the reformists' perspective as peripheral affecting the medically unfit, the psychologically disturbed, the socially deprived and girls too young to act

44. Ibid., p.116.

45. Ibid., p.108.

46. Ibid., p.16.

rationally in their sexual behaviour.⁴⁷ To the reformers, it is argued, the notion that 'normal' women might decide they required abortions was untenable (if they considered the possibility arising at all) for 'normal' women used reliable contraception and adopted a rational mode of procreation. Moreover, the reformers believed that all normal women welcomed motherhood and accepted and valued the existing family structure. Abortion was then required for those cases who, though not medically at risk in a direct sense, would be medically affected by virtue of their social circumstances. Abortion was then seen as a means of maintaining a strong family structure in marginal groups where the family was so large as to be threatened by an additional birth or where individuals were considered psychologically unable to support a stable family. Women outwith these categories, i.e. 'normal' women who demanded abortions were thought to be frivolous and irresponsible and no legislator could be expected to cater for them.⁴⁸

Greenwood and Young delineate three basic positions on abortion: (a) that of opposition to all abortion except to save the life of the mother; (b) that which would allow abortion on demand; and (c) that of the reformers who adopt neither of these extreme positions but who would allow abortion in certain defined circumstances. The latter are further divided into progressives and conservatives depending on whether

47. Ibid., pp.17-20.

48. Ibid., pp.74-75.

they wish to retain the 1967 Abortion Act or to legislate severely to restrict, but not to repeal it. Greenwood and Young identify SPUC and NAC as representing, respectively, the first two extreme positions. ALRA, David Steel and the parliamentary defenders of the 1967 Abortion Act are classified as progressive reformers; James White, Leo Abse and the parliamentary supporters of the White and Bennion Bills are categorised as conservative reformers.⁴⁹ Any difference between these two wings of the reformist position is not then one of principle but relates only to technical details, to finer points of discussion on who should be included in the 'deserving' group to be allowed access to legally available abortion as a palliative to the social problems they typically experience.

ALRA is placed very firmly in the ~~reformist~~ camp:

ALRA is the body which can be most identified with progressive reformism ... In the heroic period of its history ... [it] shared many of the fundamentals if not the emphasis of the conservative reformers ... Both in their attitudes to parliamentary politics and the socio-medical nature of abortion ALRA were typically reformist. It is only when we come to the question of which women need abortion that their major difference in emphasis with the conservatives becomes apparent.⁵⁰

In order to place ALRA within essentially the same camp as conservative reformers, Greenwood and Young have obviously accepted ALRA's official statements and literature of its 'heroic' period at their face value whereas the present study, by its fuller examination carried out over a longer time span has

49. Ibid., pp.15, 36-46.

50. Ibid., pp.78-81.

shown that what ALRA always wanted, as opposed to formally demanded, was abortion on request and that its more modest official position was consciously settled on for purely tactical reasons since the mood of Parliament was not receptive to its more far-reaching demands.

Greenwood and Young also firmly place the blame for the continuing controversy over the abortion issue at ALRA's doorstep:

The current struggle over abortion is because of the limitations of ALRA. Their elitism blinded them to the necessity of a mass-based movement, the building of which might have resulted in the achievement of more thoroughgoing results at an earlier date. A mass movement would have⁵¹ strengthened ALRA and broadened the argument.

Furthermore, they argue that the inadequacies of the principles of reformism underlying ALRA's activities provided the substance on which anti-abortionism thrived⁵² and were the backbone of the stance taken by White and his supporters in 1975.⁵³ The move by ALRA in the last few years to the more contentious position of the 'Woman's Right to Choose Campaign', which is viewed by Greenwood and Young as a fundamental change in ALRA's policy, is seen as having been forced upon the organisation by the Women's Movement and more especially by the emergence of NAC,⁵⁴ (this interpretation is again at variance with that of the present case study).

51. Ibid., p.136.

52. Ibid., p.84.

53. Ibid., p.43.

54. Ibid., pp. 61 and 78.

The authors contend that the underlying model of society held by the reformers shaped the debates surrounding abortion. It was the practical concern of the reformers to iron out a few of the more marginal problems confronting society for, by so doing, the problem groups would be integrated into the body of an essentially just and healthy society.⁵⁵ The Abortion Act 1967 is then seen by Greenwood and Young as having been permitted by the dominant élites controlling society and the law making processes for it was in their interests to do so; their support for limited abortion was practical, a means of controlling potentially threatening social problems:

Abortion is a highly effective means of limiting the cost to the social services of lower working class groups therefore it is in the interests of reformists to direct their abortion policy to this group. Ideologically this is easy as their map of the social order would label the marginal working classes as inadequate. Reformist legislation therefore reflects the ruling class material interests and is phrased in terms of reformist ideas as to the nature of society.⁵⁶

They further argue that abortion on demand would not have been (and will not be) allowed (without the development of a mass working class movement) and furthermore that it was and is strongly resisted by the reformers (which includes ALRA) since:

... its existence would threaten their most cherished beliefs as to the nature of society.⁵⁷

Abortion on demand would explicitly admit that abortion was available because of economic circumstances, that the system was

55. Ibid., p.74.

56. Ibid., p.119.

57. Ibid., p.75.

unable to provide women with a real choice regarding family size. Moreover, to make abortion available to all women regardless of financial circumstances would, it is argued, undermine the reformers' fundamental conception of women and of the family, for the authors believe that sexual pleasure is still generally regarded as legitimate only if related to having children and that procreation is legitimate only within the nuclear family:⁵⁸

It is because of their belief that the economic system and the nuclear family are fundamentally sane institutions in this best of all worlds that the reformers deem women seeking abortion - outside of those in the most grim and marginal circumstances - to be not rational and to be acting frivolously.⁵⁹

Greenwood and Young do not entirely rule out the possibility of abortion on demand but see it as a possibility only if a mass movement develops which wrests this concession from the ruling classes. This will only be won, however, if the ruling elite renegotiates its definition of abortion. This renegotiation will only take place if the ruling class feel threatened by too many crises, by too great a demand being placed on social services, by soaring crime rates and by problems of 'ghettoes':

In crisis situations, governments do veer in a reformist direction, ... but that reform ... is shaped and altered in the direction of the ruling interests.⁶⁰

Greenwood and Young therefore see the shape and content of abortion law in this country as a straightforward example

58. Ibid., p.119.

59. Ibid., p.76.

60. Ibid., p.98.

upholding conflict theory of law emergence.

The underlying conception of Pym⁶¹ is more difficult to trace and discern. In a relatively short book she briefly reviews the role of pressure groups in effecting those reforms in the 1960s she terms 'permissive'; abortion, capital punishment, divorce, and homosexuality. In addition, she draws from the work of other writers of case studies of such diverse pieces of legislation as the Clean Air Act 1956, the Race Relations Act 1965, the Monopolies and Restrictive Trade Practices Act 1957, and the Commonwealth Immigrants Act 1968,⁶² in order to formulate her conclusions on the extent of pressure group influence on the legislative process. In such a book, concentration on abortion law reform is necessarily limited.

Pym draws a picture of group activity fighting for recognition of their values and goals within the legislative arena but set against a general background of rapidly changing societal values in support of law reform.⁶³ She recognises the importance of thalidomide to the cause of abortion law reform by generating awareness of the problem and by winning sympathetic support for legally available abortion in certain circumstances. The Roman Catholic Church, its lay organisations and SPUC are seen as outright opponents of the Abortion Bill; the BMA and the RCOG, though not totally opposed to reform, as

61. Pym, Bridget: *Pressure Groups and the Permissive Society*, op.cit.

62. Ibid., see p.144 for full list.

63. Ibid., see pp.56-81 especially.

counselling moderation, in which they had the support of the churches; and ALRA is seen as the reforming body. The comparatively strong influence of the churches and the various branches of the medical profession is recognised, an influence seen to derive from their being well-established, institutionalised and respectable.⁶⁴ Nevertheless, to Pym, ALRA was very much the power behind the 1967 Abortion Act not only in effecting its appearance on the statute book but also (unlike the view adopted in this study) in shaping the content and form of the Act itself:

By providing the Bill itself, ALRA set the terms around which other groups had to argue and, despite some minor concessions on some points, the Act incorporated a large slice of its programme ... No other group had quite the same success although BMA and RCOG intervention were almost as important.⁶⁵

As did Greenwood and Young, Pym has accepted ALRA's public pronouncements at face value. The nearest she comes to articulating a position on how and why the 1967 Abortion Act emerged is to say that:

Abortion law reform was a clear case of pressure group politics having an influence and perhaps represents the highwater mark of pressure group intervention.⁶⁶

Pym therefore appears to adopt a pluralistic notion of law emergence in relation to abortion. However, after she has considered the numerous aforementioned Acts, her position is not quite so clearly drawn. With the particular exception of ALRA, she decides that 'the role of pressure groups is at best indirect and at worst negligible' and that the Government is all

64. Ibid., pp.56-58.

65. Ibid., p.116.

66. Ibid., p.81.

powerful.⁶⁷ Groups are said to have influence only in that:

... they are agencies disseminating opinions which, impinging on the consciousness, become imperceptibly part of the taken for granted world. This indirect and uncertain process is the most common, perhaps the most important and certainly the most insidious form of group intervention in the political field ... So groups do have some role ... but when all is said and done their contributions tend to be confined to the periphery, to the supportive campaign, the watchdog brief or ineffective huffing and puffing.⁶⁸

At this point, Pym therefore appears to reject pluralism as an adequate explanation of law emergence, yet she offers little in its place for she also rejects both the idea that the 'permissive' reforms of the 1960s were necessary to economic interests which 'demanded flexible and spendthrift consumers rather than obedient producers and disciplined entrepreneurs',⁶⁹ and that which says that the more powerful economic interests can 'out-propagandise' any move contrary to their interests and promote either directly or indirectly those changes consonant with their interests.⁷⁰ Moreover, she contradicts Greenwood and Young, in arguing that abortion law reform was directly contrary to dominant economic interests in that it led to self determination on the part of women.⁷¹ The picture which emerges from Pym therefore is that she endorses the view of the 1967 Abortion Act as being the product of pluralistic competition but that her more general position is both unclear and confusing.

67. Ibid., p.115.

68. Ibid., p.119.

69. Ibid., p.126.

70. Ibid.

71. Ibid., p.128.

Richards'⁷² position is much easier to discern. At one point in his chapter on abortion he seems to take the view that the climate of opinion by the mid 1960s had come to generally favour the notion of reform and that the reform was then a result of consensus:

The climate of opinion had become very different from that which had produced the Birkett Report ... the worry was ... a population explosion. Attitudes to contraception had become more favourable ... There was also greater tolerance of extra-marital sexual intercourse. The idea that easier abortion would lead to moral⁷³ decay and sexual licence had lost much of its power.

Then at another point he suggests that 'it was necessary to restrict the number of unwanted babies' thereby limiting the demands made upon the welfare state in order to maintain the levels of minimum social provisions which had been achieved in the post-war years.⁷⁴ Presumably, although Richards does not explicitly say so, the interests of any dominant economic élite would also be protected through such a process. However, shortly after this, Richards' implicit underlying notion of how the 1967 Abortion Act came about becomes clear. It is one of pressure group politics and pluralistic debate for he delineates the positions of the various groups involved in the abortion controversy and then describes their behind the scene activities during the passage of the 1967 Act.⁷⁵ Richards

72. Richards, P.G.: *Parliament and Conscience*, op.cit.

73. Ibid., p.95.

74. Ibid.

75. Ibid., pp.95-112.

too accepts ALRA's official public pronouncements as portraying their real aims. Moreover, Richards does not question whether the groups were of equal power and influence and therefore his pluralistic outlook is of an unmodified form. The outcome of the activities of the groups is explained by better tactical manoeuvring on the part of ALRA and especially its nurturing of sympathetically inclined M.P.s, particularly Cabinet members. After reviewing the reforms of the 1960s associated with 'conscience', Richards concludes that British democracy is based on representation, a system in which:

... the public can express opinions on any issue through pressure groups, the mass media, and⁷⁶ personal communication with their elected representatives.

However, he does concede that public opinion, although it can never be 'written off' entirely no matter the form it takes, carries most weight when 'organised and specifically and precisely expressed by persons of authority'.⁷⁷

Finally, a brief word on the work of Hindell and Simms⁷⁸ will suffice for the purpose and nature of their book Abortion Law Reformed was more extensively stated earlier in this case study. Their purpose is very much to describe the events leading up to the main Bills of the 1960s, that of Lord Silkin and David Steel, and to provide an exhaustively detailed description

76. Ibid., p.201.

77. Ibid., p.203.

78. Hindell, K. and Simms, M.: Abortion Law Reformed, op.cit.

of the day to day mechanics and procedures involved in these Bills' parliamentary lives. They were even less concerned than the writers examined here with the general question of why laws emerge or even with the specific question of why as opposed to how the Abortion Act 1967 emerged and they draw no explicit or implicit conclusions on this problem. However, their work does provide a description of the main groups involved, albeit with a naturally more detailed description of ALRA and from ALRA's viewpoint. As such they seem to see the Act emerging as a result of pressure group politics. However these authors lay much greater stress on interpersonal interaction than any other writer although this does not take over exclusively in their descriptive work. Moreover, perhaps more than any other writer, they also stress the role of public opinion, of consensual politics, for they are at pains to point out that ALRA was the spearhead of a public opinion supportive of reform:

... the chief burden of representing those millions of women and of demonstrating their opinions ... was⁷⁹ carried by Vera Houghton and the ALRA Committee ...

They describe the task of ALRA as having been to activate what they describe as a widely-held attitude:

The liberal-minded public was now dimly aware of the need for some kind of abortion reform, so were politically active working-class women. What was required was to translate this now widely held attitude into political reality. The task was less to proclaim the truth than to organise [it] ...⁸⁰

However, although their emphasis is much more on consensus than

79. Ibid., p.201.

80. Ibid., p.241.

other writers, it cannot be taken as the only conception underlying their work for they recognise the existence of their opponents and the widely differing views of those bodies in favour of reform in principle. Again therefore this work tends to support a pluralistic view of emergence of law.

8. The legislative process

However helpful the general theoretical models outlined in the first section of this chapter prove to be in an analysis of why it is that some areas of behaviour come to be legally defined as criminal (by pointing to different types of issue, underlying concerns for example economic interest, moral indignation, status aspirations) there is an arena through which all laws have to pass, regardless of issue, promoters or type of motivation and that is of course the legislature. Most writers interested in general theories of the emergence of law have paid scant attention to the simple fact that before there is a law on the statute book it must pass through all stages and procedures in Parliament and be given the Royal Assent (although this latter stage will in practice be a formality). Only Paulus explicitly recognises that an examination of legislative processes is not only helpful but necessary for any study concerned with the emergence of a law:

However one may perceive the rituals of the "parliamentary process", they are a stark reality that must be taken⁸¹ into account in any evaluation of the law-making process.

81. Paulus, I.: The Search for Pure Food: A Sociology of Legislation in Britain, op.cit., p.53.

With the exception of Greenwood and Young, whose approach is more akin to the general theorists, the writers reviewed in the second section of this chapter have shown themselves much more acutely aware than the general theorists of the political and legislative processes whereby new laws are enacted. This is especially so in the case of Richards and, to a slightly lesser extent, Pym, whose primary focus has been in terms of the activities of pressure groups. The point taken in the present thesis is that general theory is relevant and important, and needs more attention than most other writers on abortion have given it; but that it itself needs to be enriched by greater attention to political processes and pressure group activities. This section will be devoted therefore to an analysis of these processes and activities.

Groups of individuals wishing to secure a new piece of legislation must work through parliamentary processes to obtain their objectives. For present purposes these groups will be termed pressure groups, by which is meant subsections of the population organised on the basis of fairly specific common interests or attitudes and aiming to influence the Government and its activities.⁸²

82. There is an abundance of confusing terminology in this area e.g. lobbies, interest groups, cause groups, sectional interests, promotional groups etc. For a discussion see, for example, Potter, A. *Organised Groups in British National Politics*, Faber and Faber, London, 1961; Stewart, J.D.: *British Pressure Groups*, Clarendon Press, Oxford, 1958; Duverger, M.: *Party Politics and Pressure Groups: a comparative introduction*, Methuen, London, 1972; Roberts, G.K.: *Political Parties and Pressure Groups in Britain*, Weidenfeld and Nicholson, London, 1970.

To see how they can influence Parliament in the legislation which is passed, it is useful to look at the recognised sources of legislation in this country.⁸³ The most important source of any legislation is of course the Government of the day for, as Rush⁸⁴ notes, it controls the business of the House of Commons to a large extent and can usually ensure the passage of almost all its legislation. The nature of legislation introduced by any government will to some extent be determined by the party manifesto for which it has an electoral mandate.

Yet, in practice, this mandate is not as important a factor as might at first be thought. Various studies of legislative programmes have shown that in one parliamentary year the number of measures originating in the election manifesto is very small. In one of the earliest such studies, Jennings⁸⁵ showed that in the 1936-37 session only nine out of 54 Acts passed were purely political in origin although this was the first year of a new Parliament when the party manifesto is likely to have most influence. In the 1962-63 session, only one Bill emanated from the 1959 Conservative election manifesto and in the following year none did.⁸⁶ Similarly, in the 1967-68

83. For a discussion of these sources see Walkland, S.A.: *The Legislative Process in Great Britain*, Allen and Unwin, London, 1968, ch.2.

84. Rush, M.: *Parliament and the Public*, Longman, London, 1976, pp. 37 and 76. For a discussion of how control of the timetable is achieved see especially pp.37-39.

85. Jennings, Sir Ivor: *Parliament*, Cambridge University Press, Cambridge, 1958, Appendix 2.

86. *The Times*, 19 September 1963.

session only one measure contained in the 1966 manifesto was introduced by the then Labour Government.⁸⁷

Such studies also show that by far the most important sources of government legislation are government departments themselves.⁸⁸ This does not mean however that all departmental measures are automatically introduced for the Cabinet of the day retains ultimate control over what is introduced.⁸⁹ Royal Commissions and parliamentary select committees are another source of legislation. The reasons for setting up such committees are varied,⁹⁰ and, as Pym⁹¹ recognises, their role is often the negative one of blocking attempts at reform while the committee sits; as for example in the case of the Royal Commission on Marriage and Divorce set up in 1950. Hostile or even divided reports can be ignored and legislation may be introduced directly contrary to what was

87. Rush, M.: op.cit., p.77.

88. See Jennings, Sir Ivor: op.cit.; see The Times, 19 September 1963 which showed that of 22 Bills pending legislation in the 1963-64 session, 16 were departmental measures.

89. Walkland, S.A.: op.cit., p.23.

90. See Cloakie, H.M. and Robinson, J.W.: Royal Commissions of Inquiry, op.cit., who suggest that they can be used a. to prepare the way for a predetermined policy; b. to act as a 'sounding' device; c. to avoid dealing with a controversial matter by referring it to expert opinion; d. to prevent anticipated political pressure; e. to delay a question distasteful to the Government whilst pacifying politically powerful groups.

91. Pym, Bridget: op.cit., p.90.

recommended, as happened in the case of the Industrial Relations Act 1971, introduced by a Conservative Government, which ignored the recommendations of the Donovan Committee set up in 1965 by the then Labour Government to look at the whole area of industrial relations. Even unanimous reports can be ignored as happened with the Wolfenden Report on Capital Punishment which did not result in legislation until ten years later.

Private members can also be a source of legislation through their introduction of private members' Bills. Generally speaking, these Bills form but a small part of the legislative programme. Richards has shown that in the 1968-69 session private members' Bills accounted for only 6.7 per cent of parliamentary time.⁹² However, such measures have recently been the source of major social reforming Acts, for example in the areas of divorce law, capital punishment, and homosexuality.

The avenues open to groups seeking to provide legislation are then diverse. They can attempt to have their views adopted on a party's manifesto by promoting their views through the party conference or by seeking to 'convert' individual M.P.s to their point of view so that they take up the issue with their own parties. Another avenue is to try to influence government departments and persuade them that their issue is a legitimate cause for concern requiring legislative action. This is one of the most important avenues through which pressure groups may

92. Richards, P.G.: *The Backbenchers*, Faber and Faber, London, 1972, p.95.

exert influence. 'Consultation with pressure groups in the process of policy making in Britain has a long history.'⁹³ Wherever there is acute competition for electoral support, no political party can afford to ignore any important section of the population. Just as political parties must recognise the political thinking of important sections, so must departments in their individual fields of responsibility. Many groups are now consulted as a matter of course by departments in their day-to-day administration, as is evidenced by the growth of consultative committees which are made up of representatives from the civil service and interested outside bodies.⁹⁴

The need to consult is perhaps most obvious when it is realised that many governmental activities are carried out by bodies outside the Government itself; the NHS, for example, requires the co-operation of the medical profession. Indeed, in setting up the NHS, the Labour Government of 1945-50 needed the co-operation of doctors, dentists and other medical workers. It had failed to recognise this during the passage of the legislation but adopted a much more accommodating and conciliatory attitude after 1946.⁹⁵

Although the term pressure group has been used up till now

93. Walkland, S.A.: op.cit., p.34.

94. Political and Economic Planning: Report on Advisory Committees in British Government, 1960.

95. See Eckstein, H.: Pressure Group Politics: the case of the British Medical Association, Allen and Unwin, London, 1960.

to cover both 'interest' and 'attitude' groups, as Stewart states,⁹⁶ departments do tend to consult most frequently with those groups in which 'interests' are concerned (sectional pressure groups), rather than those characterised by shared attitudes (cause pressure groups). Beer suggests that this is most probably due to the power sectional interest groups hold (they are mostly trade unions, employers' associations and professional associations) and to the fact that the Government requires their advice on, acquiescence in and approval of their policies.⁹⁷ 'Cause' pressure groups do not have similar types of sanctions however and have either to work very hard to become 'recognised' by departments, for example the RSPCA, or work through 'established recognised' sectional groups with ready-made links with departments by persuading such groups to their viewpoint, as is evidenced by this study which shows 'cause' groups trying to influence health professionals and trade unions.

Groups can also try to have commissions established with a view to subsequent legislation. This may be done by publicising the perceived problem in the mass media, by persuading individual M.P.s or parties or departments that a

96. Stewart, J.D.: British Pressure Groups: their role in relation to the House of Commons, Clarendon Press, Oxford, 1958, p.18.

97. Beer, S.H.: Modern British Politics, Faber and Faber, London, 1965.

situation exists arousing concern and that it requires examination. However, as we have seen, such bodies are just as likely to be used in order to block legislation, if only temporarily, as to promote it and their chief value tends to lie in publicising an issue, and in arousing awareness in the existence of a perceived problem area.

One important avenue for pressure groups of a 'cause' nature is to promote legislation through a private member's Bill. There are three procedures for the initiation of this type of Bill:⁹⁸ unballotted Bills; Ten Minute Rule Bills; and ballotted Bills. Unballotted Bills are only likely to pass the first reading stage if (a) they are given an unopposed second reading which is most unlikely if the Bill is controversial; (b) if all ballotted Bills due for discussion on a particular Friday are disposed of before the end of the sitting which is also unlikely; or (c) the Government finds time for it which only happens if it wishes the issue brought before Parliament but does not wish to take the lead in doing so.

A Ten Minute Rule Bill may be introduced after Question Time on Tuesdays and Wednesdays and only ten minutes is allowed for its introduction and a further ten minutes for one opposing speech. In the unlikely event that such a Bill gets a second reading (its progress can be blocked if any M.P. objects) it then

98. See Taylor, Eric: *The House of Commons at Work*, Penguin, Harmondsworth, 1967, pp.72-73, 130-1, 134, 152-53.

follows the same procedure as unballotted Bills.

The main vehicle for private members' Bills is the ballot which takes place on the second Thursday of every session. Twenty-seven places are drawn and the Bills are lodged three weeks later. Sixteen Fridays are set aside for their consideration of which the first eight are for second reading. Since one measure may take up the whole of a Friday, only eight Bills have a realistic chance of a hearing. As all private members' Bills go to one standing committee (except when the Government intervenes and allows a Bill to be considered by another) obviously the higher the place a private member has in the first eight, the greater the chances of all stages of his Bill being completed in one parliamentary session. Inevitably many private members' Bills fail through lack of time (for Bills uncompleted at the end of a session lapse) so the whole process is fraught with difficulty.

Although these avenues of influence are open to pressure groups, it is obvious that, for a Bill to be introduced, somebody, either Government or private member, must be convinced that it is right to do so. This may be because they, the Government or private member, are convinced of the absolute 'rightness' of the measure but it need not necessarily be so. Governments usually wish to stay in power and private members do not usually wish to lose their seats. Judgements are often made on the basis

of such political considerations. However much convinced of the absolute rightness of an issue, few Governments would persist with a measure which they knew would inevitably lead to their downfall, either in the immediate sense or the long term because of overwhelming opposition at the next general election. Such a measure would not be introduced or would be modified in such a way as to lessen opposition to it by seeking compromise. Political considerations may also mean that where a measure is regarded with indifference by parliamentarians it will nevertheless be introduced if it will attract popularity. Even where a Government regards an issue as wrong or ill-conceived it may sometimes decide that it is politically expedient to introduce a Bill on it.

One example of the non-introduction of a Bill on political cost considerations is the Industrial Relations Bill based on the White Paper In Place of Strife which was to have been introduced by the Labour Government in 1969.⁹⁹ Again, the minority Labour Government elected in 1974 was forced to modify even major pieces of legislation such as the Finance Bill.¹⁰⁰ After the rejection by the Lords in 1956 of Sidney Silverman's Bill to abolish hanging the Government found itself in a position of defending a Bill it had never wanted and decided to introduce its own Bill to pacify parliamentary demands and avoid a collision with the Lords.¹⁰¹

99. See Richards, P.G.: op.cit., p.101.

100. See Rush, M.: op.cit., p.21.

101. See Pym, Bridget: op.cit., p.51.

Similarly, private members are often guided just as much by political expediency as by principle.¹⁰² Few private members, especially if young, ambitious and hoping for a career in politics, are likely to introduce a Bill to which their party is fundamentally opposed in principle and/or do not regard as 'politically' desirable.¹⁰³ 'Ambitious young men know well that excessive independence of spirit will not ingratiate them with their leaders.'¹⁰⁴ On the other hand, private members may consider it advantageous to introduce a Bill to which they may as individuals be opposed or indifferent if their party would like legislation on a certain issue but do not wish, for one reason or another, to be identified with as a party or Government. As Richards notes, this is often the case in matters of 'conscience'¹⁰⁵ or if there is strong constituency support or pressure for a measure and it does not conflict with party political or personal political considerations.

So far we have only been concerned with the major preconditions of legislation, that is that a Bill must be introduced into Parliament. But introducing a Bill is only a first step and getting a Bill through Parliament is fraught with difficulty. Only a few measures not introduced by the Government actually succeed in becoming law as the odds are

102. For a discussion of the factors influencing private members see Pym, Bridget, op.cit., pp.102-114.

103. See Richards, P.G.: op.cit., p.57.

104. Richards, P.G.: op.cit., p.59.

105. See Richards, P.G.: Parliament and Conscience, Allen and Unwin, London, 1970.

heavily weighted against them. The Government takes up the majority of the time of the House of Commons for its own business so that there are severe time restrictions on private members' Bills. All Bills to succeed must obtain a majority vote in Parliament. The normal procedure¹⁰⁶ is that a Bill, after its introduction and formal first reading in either House passes to a second reading debate at the end of which a vote is taken on its general principles. If a majority is obtained then it passes to a committee where it is examined in detail and voted on clause by clause and amendments are introduced. After this comes the report stage at which the Bill in its probably new form is reviewed and further amendments may be made. Then, at third reading, a vote is taken and if a majority is secured the Bill moves to whichever is the other House where it goes through the same stages. There is ample opportunity therefore for those opposing the Bill, either in principle or in specific details, to gather enough votes to prevent a majority vote. The considerations entering into the decision to introduce a Bill as outlined above are obviously of extreme importance with regard to obtaining a majority vote.

Government Bills have a greater chance of securing a majority as usually¹⁰⁷ a system of official whipping is involved.¹⁰⁸ Failure to vote with the party may cause the private member to be expelled

106. See Taylor, Eric: op.cit., ch.4.

107. A rare case of members being allowed a free vote on a Government measure was in 1971 on the principle of entry to the Common Market.

108. For a discussion of whipping see Richards, P.G.: The Backbenchers, op.cit., ch.5.

from the whip, but this is rare, and the whip may be later restored.¹⁰⁹ More usually members are subject to informal sanction or party discipline. They can be banned from party meetings,¹¹⁰ upbraided, or, if persistent, reported to their constituency party. However, sometimes no action is taken, as in the revolt by sixty-nine Labour M.P.s who supported entry to the Common Market in 1972. Sanctions are more effective against individual rebels than factions; discipline is probably more affected by loyalty than fear of sanction. Occasionally a Government will withdraw a Bill when faced with the prospect of large defection by its own members. This happened on the Industrial Relations Bill 1969 which was not even formally introduced; plans to nationalise steel in 1965 were similarly postponed; the Parliament Bill of 1969 was dropped.

If a free vote is allowed, as in the case of some Government Bills and all private members' Bills, ensuring a majority vote is much more problematic. For a private member's Bill the sponsor and his supporters must act as their own whips. They cannot however force even those members known to be sympathetic to vote or even to stay in the House. The time strictures on such Bills have already been noted and it would appear that few Bills of this nature have much chance of success unless the Government's attitude, at the very least, is one of benevolent neutrality if not of tacit support, so that there is at least a possibility of extra time being

109. As happened in 1963 when five members who had been expelled in 1961 for opposing the service estimates were restored. See Richards, P.G.: op.cit., p.59 for further examples.

110. As happened in 1968 when 25 Labour M.P.s abstained on a vote of confidence relating to Government expenditure cuts; see Richards, P.G.: op.cit., p.61.

granted by the Government.¹¹¹

Given that these are the procedures which must be complied with to ensure legislation, the pressure group must come to terms with them since they are the channels through which they must operate if they seek legislation. They must attempt to focus the attention of M.P.s, the Government and civil servants on what they consider to be a neglected social problem and convince their audience that their solutions are the correct ones. To do that, they must be politically sensitive, they must have an awareness that opposition is not only likely but inevitable if what they want is controversial. That opposition must be taken into account when constructing a plan of action. If a pressure group fails to appreciate the existence of an opposition, far less underestimates its strength, its chances of success are slight.

Opposition or not, any group's tactics must include appearing reasonable and responsible if it is to gain enough support not only to have a Bill introduced but obtain a majority vote. This may mean that ostensible arguments have to be advanced as they may have the greatest chance of success as persuasive tools. There may have to be a retreat from the group's original aims to more moderate aims in the hope of gaining more support or of arousing less opposition.¹¹²

111. See Rush, M.: op.cit., p.31 and Pym, Bridget: op.cit., pp.95-96.

112. Schlesinger, Arthur M.: The Historical Climate of Reform. In Gusfield, J.R. (ed.): Protest, Reform and Revolt, John Wiley and Sons, New York, 1970, pp.121-134 at 124.

The prestige of a group is extremely important. If it is seen as responsible as complying with the recognised channels of dissent and the limits of dissent, i.e. 'the rules of the game', then its chances of being listened to are greater.¹¹³ They must make themselves expert in their area so that the chances of being discredited are reduced. Demands must be made which are seen to be in accordance with generally accepted values, for it is only when the goals of the group are seen as in agreement with existing values that the group is likely to obtain a legitimate status.¹¹⁴ It is an advantage too to have a well thought out concrete proposal which may be taken up by a private member who is successful in the ballot since the time between the announcement of results of the ballot and the presentation of a Bill is very short and it is notoriously difficult to draft a Bill which is not readily torn to shreds by opponents exposing inherent technical deficiencies.

The political considerations inherent in the decision to introduce a Bill and also in obtaining a majority, mean that a pressure group must be able to exploit any discontent over any issue or create a climate of opinion both within and outside Parliament which is favourable to the proposed legislation. This will involve publicly promoting awareness of the issue through the mass media, public meetings, leaflets etc.

113. Mackenzie, W.J.M.: 'Pressure Groups in British Government', British Journal of Sociology, Vol.6, p.133.

114. Clark, B.R.: 'Organisational Adaptation and Precarious Values: a case study', American Sociological Review, Vol.21, pp.327-336.

and concentrated efforts to have the group's solution regarded generally as the 'right' one. Attempts will then have to be made to demonstrate the strength of support for a particular issue, for example through opinion polls or demonstrations, so that it becomes politically desirable to introduce legislation either for a Government or a private member. Such a climate of opinion then greatly aids the process of obtaining a majority for the issue has become one on which it is politically desirable to act.

It is only by confronting the legislative processes over any issue, by examining whether public opinion plays a part; whether groups help mould that opinion; whether they use the apparent channels of influence which are open to them and, if they do, in what manner are they used; whether those channels are in practice open to all or only to more powerful groups or even only to one, the dominant economic group, that the validity of the models of law emergence which have been advanced can be properly assessed.

CHAPTER SEVEN

SUMMARY AND CONCLUSION

1. Introduction

The preceding chapter provided a review and critique of the various theories which have been advanced to explain the emergence of laws within advanced capitalist societies. It also concluded that no one theory appeared to provide an adequate explanation of the emergence of all criminal laws, but each appeared to contain some elements of truth which were applicable to different types of issue. Consequently it was suggested that it was perhaps more useful to envisage a continuum embracing pure consensus, extreme conflict, pluralism and modified conflict theories.

The usefulness of this continuum was seen to lie in allowing for differentiation between different types of criminal laws and for consensus and conflict to be treated as problematic. Furthermore it was suggested that however helpful these theoretical models proved to be in understanding the social processes involved in effecting legislation, most writers in the sphere of emergence of laws had failed to pay sufficient attention to the procedures actually involved in the legislative process which are necessary preconditions for the emergence of any law. Consequently a section of the previous chapter was devoted to a description of the necessary legislative conditions

for introducing and passing a Bill and the factors which influence those activities. The task remaining in this chapter is to examine how applicable such general theories are to the particular case study, abortion law reform in the United Kingdom; where it falls in the continuum and how the detailed examination of the legislative stages provided illuminates these theories.

This will be done by very briefly reconstructing historically the pressures and counter pressures in the struggle for abortion law reform, and their outcome in the legislative processes. The theoretical themes discussed in the preceding chapter will be examined against this background of practical politics, with the struggle for legislative reform being divided into three main cycles; the period of legislative inaction between 1936 and 1961; the period of increasing legislative activity between 1961 and 1967 which culminated in the legislative action viz. the passage of the 1967 Abortion Act; and the period following the passage of that Act, (between 1967 and 1977), which is again characterised by legislative inaction despite much activity directed towards and within the legislature.

2. The first legislative cycle 1936-1961

Prior to 1936, the law relating to abortion was governed in England by the Offences Against the Person Act 1861.¹ That is

1. 24 and 25 Vict. Ch.100.

to say that abortion was clearly defined in the legal code, at least of England, as being criminal in nature, no matter how it was defined socially. The position was rather different in Scotland where it would appear that the law had allowed exceptions for therapeutic abortion when performed by a medical practitioner. The first public calls for reform came from a few individuals, and it was not until 1936 that a pressure group was formed specifically for the purpose of pressing for reform. The women of ALRA cannot be classified as part of a dominant economic élite despite their middle or upper middle class origins. They are better described as moral entrepreneurs; but there is also a considerable element of status politics in their activities. They wanted the operation to be available at the woman's request made to a medical practitioner, except where medical considerations indicated that it would be dangerous or undesirable for the health of that woman.

Within the larger social environment other groups were operating. One of these groups was the medical profession. This group defies easy categorisation. In a sense it can be characterised as a vested interest group for its motivation was partly self interest but the interest was not a material one but stemmed from the necessary involvement of its members in implementing any legislation. There was an element of status politics for it was anxious to retain its autonomy and therefore status. There was too a considerable element of disinterest

evidenced by a desire to secure any such measures seen to be most protective of its patients' health interests. The profession was not united on the abortion issue, the BCOG being additionally motivated by internal status politics.

Although no specific organised pressure group existed, opposition to reform came from the churches, especially the Roman Catholic Church, but the Protestant churches also did not favour any major change in the law especially as it stood after the Bourne judgment.

There are difficulties in any attempt to refer to social climate or public opinion since it is not easily defined or measured, being of an amorphous or fluid nature. Key has noted this difficulty rather aptly:

To speak with precision of public opinion is a task not unlike coming to grips with the Holy Ghost.²

Nevertheless as he states it is often an influential although not necessarily determining factor in human affairs, and some attempt must be made to assess it.

Although a few relatively powerless groups did call for limited reform, the fact that it was not considered a suitable subject for discussion in the media tends to confirm the view that the social climate was not conducive to reform and certainly inimical to the notion of abortion on request. As a result ALRA

2. Key, V.O. Jnr.: 'A Definition of Public Opinion', in Christiansen, R.M. and McWilliams, R.O. (eds.) Voice of the People, McGraw-Hill, New York, 1967, 2nd edition.

modified its original extreme platform and looked to generating general awareness of the issue.

What limited pressure for reform existed was partly responsible for the establishment of the Birkett Committee which exemplifies the role of such committees in 'cooling passions'. Its report was an unequal compromise, its recommendations principally upholding the views of the more powerful established groups, the medical profession, in particular the BCOG, and the churches.

It has been said that such committees often act either as a source of legislation or as a means to delay legislation. The intervention of the war years makes it difficult to assess the intention of the Government in setting it up, but in view of the inaction of successive Home Secretaries after the war, it can perhaps be seen as a stalling technique rather than as a pre-legislation endeavour.

The fact that the three post-war legislative attempts to reform the law were all private members Bills indicates that governments felt no pressure to tackle the issue. There was no overwhelming demand for abortion law reform within the country; it did not form part of any election manifesto; the health service professionals, normally consulted by government departments, were not pressing for reform. Political cost considerations favoured legislative inactivity on such a highly controversial issue.

Joseph Reeves was personally committed to abortion law reform. His Bill, primarily a publicity exercise, was drafted by ALRA in such a way as to appeal to the lowest common denominator; it thereby hoped to obtain a majority at second reading. However, the rules of parliamentary procedure governed the fate of this Bill: its low place in the ballot (a chance issue over which no-one has control) meant that Reeves had only one and a half minutes for its introduction. It was anyway so badly drafted that the opposition would easily have discredited it. The Speaker could not accept that 'the question be now put' and the Bill was talked out. But it could have been talked out by any M.P., it required no power on any individual's or group's part. Failure was therefore due to a chance factor within parliamentary procedure.

Lord Amulree's Bill was more carefully drafted by ALRA but went little further than that of Reeves' since it was introduced in the Lords and therefore likely to be only a publicity generating exercise. Its withdrawal was due to ALRA's own lack of sensitivity in trying to pressurise an individual peer to go beyond what accorded with his own principles and not to be power of any group.

Kenneth Robinson was again an M.P. firmly committed to the idea of reform. Relatively young, and probably ambitious, he judged that the political cost of introducing such a measure would at least not be detrimental to his career ambitions. The Bill, like Reeves', was a compromise but it did contain some new ideas,

perhaps in the view that his low ballot position would mean it was again likely to be only a publicity generating exercise. Although the debate lasted rather longer than that on the Reeves' Bill, it was still not long enough to prevent the Bill being 'talked out'. In this case, the 'talking out' was done by a group of Roman Catholic M.P.s but the rules are such that any group of M.P.s could have done so. The failure of the Bill is thus not evidence that its opponents belonged to a dominant economic élite, or were moral entrepreneurs, or belonged to a vested interest group or whatever characterisation one wishes to employ. They could just as well have been acting purely and simply on their own individual convictions or on individual political cost considerations such as constituency pressures or the desire to enhance their own standing within their own parties.

3. The second legislative cycle 1961-1967

The limited awareness of the issue which had been generated and the Bills which had been introduced facilitated the task of ALRA by providing a foundation on which to build. The new ALRA personnel of the 1960's were motivated by factors similar to those guiding the previous generation and felt the same need to compromise. Again they are most aptly described as moral entrepreneurs. In this era the element of status politics was even more carefully concealed.

Among the other concerned groups the medical profession and

the churches, again comprising a mixture of vested interest (in the sense already described) status politics and disinterest, were again incontrovertibly well-established and powerful. The medical profession was not proactive but reactive; although united in its concern that its views should carry the most weight, its internal divisions (again the result of status politics) helped diminish its normally considerable power. The failure of its stalling tactics is worthy of note as demonstrating that even well represented and normally consulted groups may not have sufficient power to influence ministers against their own individual views. It is true that the Bills introduced were not Government Bills but the Government resisted calls for commissions of inquiry, and did provide parliamentary time for the legislation. The churches too were not united, there being a multiplicity of definitions of and proposed solutions to the problem and no unanimity as to whether indeed the matter constituted a problem at all.

Counter-reform groups (the Roman Catholic Church, Catholic Lay Organisations and SPUC) disputed the claims of the reformers and pressed for a Royal Commission and the consequent withdrawal of the Bills. Their failure was due partly to the personal values and beliefs of important members of the Government and partly because the legislative programme was well advanced.

ALRA continued to try to influence the climate of opinion, with some success. However, the greatest impetus to rallying support in favour of reform was provided by the thalidomide

tragedy in the early 1960's³ which captured the media's attention. The period, too, appeared, at least superficially, to be a reforming era.

During this period there were no fewer than five Bills introduced in Parliament within two years to amend the law. Again the Government failed to tackle the issue itself, regarding it as one of individual conscience.⁴ The fact that it could have introduced a Bill but allowed a free vote on it suggests however that the Government's inaction was governed by more than a desire to leave the matter to individual members' consciences. Once more political cost considerations were probably operating given that there had been no vote at a Party Conference committing the party to reforming the law nor had government departments been pressurised by the health service professionals to tackle the issue. Indeed the latter urged delay and examination. There was no overwhelming pressure for reform in the country at large such that to ignore it might cost votes and there was a danger, given the existing disagreements over the issue, that to tackle the issue might cost votes or cause damaging party splits. Legislative attempts to reform the law were therefore left to private members Bills.

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3. The recognition of the role of a serious incident or accident in generating concern and subsequent legislative action has been discussed by Rock. See Rock, P.: The System of Debt Collection in England and Wales and its Social Consequences. D.Phil. thesis, University of Oxford, 1969, p.6.
 4. For a discussion of 'conscience' in relation to legislation, see Richards, P.G.: Parliament and Conscience, op.cit.

Renée Short was personally committed to abortion law reform. Her Bill stood little chance of success, and was therefore a compromise designed to attract the least opposition. However it did not receive an unopposed second reading as a ten minute rule Bill must do and therefore failed by the rules governing parliamentary procedure. Again it must be stated that these rules in such circumstances can be used by any individual acting either from his own principles or constituency pressures or whatever and that it does not require power, strength or agreement of any other person or persons.

Although Simon Wingfield Digby had been persuaded by ALRA to take up the cause of abortion law reform he was not prepared to be further persuaded beyond the measures he thought desirable. His Bill endorsed the views of the BMA rather than ALRA, and he chose these proposals in the hope that they would appeal sufficiently to M.P.s to obtain a majority vote at second reading. However, Digby's place in the ballot was relatively low, eighth, (a chance issue); debate was curtailed and there was insufficient time for the Speaker to allow the 'question to be put'. Again the rules of parliamentary procedure governed the outcome of this Bill.

It is unlikely that Lord Silkin was motivated by ambition to be identified with this issue, nor does it appear that he had a deep and personal commitment to abortion law reform; his

interest appears to have stemmed from a chance remark by a supporter, although not a member, of ALRA, and the conclusion must be that he thought the measure desirable. The format of his first Bill was not originally marked by compromise; it presented the extreme case of middle range proposals.

However, he thought compromise essential when there were deep divisions of opinion and no general consensus and was willing to collaborate with his opponents to produce a Bill acceptable to the greatest majority. This willingness, coupled with the prevailing opinion that some form of legislation was necessary and/or desirable, led to a large majority in favour of the Bill at second reading. The Bill was further amended before and during the third reading. The amendments, some of which were introduced by Silkin himself, were generally influenced by the views of the medical profession and the churches, better established and more powerful groups than ALRA. Parliament was dissolved before Silkin's Bill reached the Commons and it was therefore lost.

In the next session Silkin re-introduced the amended Bill and it was given an unopposed second reading. However, two major amendments were introduced in the committee stages. This is further evidence that no one group was all powerful in its influence but that each was experiencing minor victories and defeats; in this case the two groups were ALRA and the RCOG. Events overtook the progress of this Bill: David Steel announced

his intention of introducing a Bill in the House of Commons; Silkin withdrew his Bill so that the Commons could debate fully the issues of Steel's Bill, since it is virtually unknown for the Commons to find time for a non-government Bill originating in the Lords.

There is no evidence to show that prior to the introduction of his Bill, David Steel was committed to the cause of abortion law reform. Indeed the evidence is to the contrary,⁵ since he spent some time deciding which option to choose. His preference was for a Border Development Bill, but he was urged by the Home Office to take up either abortion or homosexual law reform and told by the Ministry of Agriculture that no Government support would be forthcoming on a private development Bill. In discussions with the Home Office he discovered that the Church of Scotland was the only major denomination opposed to homosexual law reform. Moreover, in sounding opinion within his constituency, he discovered that there was almost universal opposition to the subject whereas abortion law reform, although not favoured, did not meet with the same rooted objections. His motivation arose therefore not so much from prior personal commitment to the cause but from 'political cost' and feasibility considerations.

Steel's position in the ballot (a chance factor) was high, third, and for the first time in the history of abortion law

5. The following passage is based on information provided in David Steel's private papers given to ALRA.

reform there was a real chance of legislative action. He was determined to make full use of the opportunity by taking note of all the involved groups and the Bill he introduced represented a mixture of the prevailing views; he was certainly intent on being more than the mouthpiece of ALRA. The struggle to influence the terms of the Bill intensified during its parliamentary passage. ALRA's vigorous lobbying, coupled with the changed social climate which appeared to favour some (unagreed) measure of reform, probably helped secure the considerable majority at second reading. However, in the six months elapsing between this and the committee stages ALRA's influence diminished while that of the medical profession, the various government departments and the churches, especially the Church of England, increased. Of these Steel regarded the BMA's support as crucial.

The Bill which emerged from committee had undergone considerable changes which reflected the power and influence of the more well-established groups. The outright opponents of the measure had filibustered so successfully that the Bill could only become law if the Government granted extra time. In an attempt to win that extra time Steel further compromised to accommodate the Home Office's viewpoint. In the event, though not immediately, the necessary time was granted.

Control of the legislative timetable is very much in the hands of the Cabinet, and there the majority favoured reform. This was crucial to the favourable decision for Steel's Bill but

political considerations cannot be entirely excluded; the very large Commons majority for the Bill suggested that back-benchers were likely to be in favour of extra time; the increasing intensity of the legislative campaign was not likely to abate and a negative decision would probably only have delayed reform; Steel's Bill probably represented the compromise most likely to appeal to the widest variety of viewpoints.

4. The third legislative cycle 1968-1977

This period is again characterised by the involvement of various groups interested in moral reform, status politics and the protection of vested interests. It also shows increasing agreement within the larger social environment on two issues: the abuses arising from the implementation of the 1967 Act were defined as a new social problem; and there was increasing, although not universal, support for the 1967 Abortion Act.

Until 1975 ALRA remained very similar in form and character. Only thereafter did it publicly acknowledge its goal of abortion on request. The personnel changed also; it ceased to be an élite pressure group run by a few middle-class women, or to be identified with any particular individuals, but was operated by women from all walks of life drawn together only by their commitment to the Women's Movement. By contrast, SPUC was

dominated by people from the middle and upper classes, nevertheless it is best classified as a moral counter-reforming group. To some extent SPUC also engaged in status politics for it perceived the abortion issue as symbolising a shift in the distribution of prestige within society. While ALRA had previously been tactically adept and willing to compromise, SPUC had not. For a brief period after the emergence of the new ALRA, its influence waned while SPUC had developed an increasingly more sophisticated organisation; it also began to show some willingness to adopt limited compromise.

The medical profession's stance was also largely governed by considerations of self interest; general practitioners, gynaecologists and psychiatrists all wanted legislation that would leave medical freedom unfettered to allow doctors to make their own decisions on any considerations they thought relevant; however internal status politics was still evident. Certain changes can be discerned in the viewpoints each segment expressed compared to the positions adopted prior to 1967, and by 1975 each section had come to favour the retention of the 1967 Act, to believe that, on the whole, it was working well, and that any abuses could and should be resolved by DHSS administrative action. In reaching this concord, the RCOG position had altered more radically than those of the other groups.

The various churches are again best classified as moral crusaders with an interest in ensuring that any legal definition

of abortion should reflect their ethical teachings. All the major churches were agreed that there were abuses stemming from the Act's implementation and called upon the Government to set up an independent enquiry, but agreement stopped at this point.

After the passage of the 1967 Act there was a growing, though not total, consensus of public opinion in favour of its retention. There was at the same time almost total agreement that the implementation of the Act had led to abuses although no agreement on how they could be eradicated. The magnitude of the pressure for a special committee of inquiry was such that the Government acquiesced for to have done otherwise would probably have shown too blatant a disregard for public opinion. The Committee's report represented a compromise but this time an unequal one favouring ALRA which perhaps suggests that their power to influence was increasing.

After 1967 there were no fewer than seven attempts made in Parliament to amend the law regulating therapeutic abortion. Again all were private members' Bills, a fact which suggests that Governments still regarded it as politically inexpedient to tackle an issue on which feelings were deeply divided. Furthermore it is probably reasonable to assume that for three years there was no discerned need for legislation until the committee of inquiry had reported and advised on what type of legislation, if any, might be necessary or desirable.

Deep personal conviction motivated Norman St. John Stevas to propose an amendment to the 1967 Act although the form of the amendment was shaped more by pragmatism than by philosophy. St. John Stevas' judgment was vindicated by the narrowness of the defeat which in turn determined the content of the next amending Bill presented by Godman Irvine (identical to St. John Stevas'). This was followed by John Hunt's Bill which was designed to regulate only those issues on which there was widespread agreement that 'something had to be done' (taxi-touting etc.). Moreover this appeal to the lowest common denominator is again evidenced in the next legislative attempts made by Michael Grylls (to curb abuses in the private sector). In the aforementioned attempts at legislative reform, the motivation stemmed from either personal conviction or political cost considerations, acting either singularly or in combination. The actual content or design of the proposed measures was determined by the need to attract more support or arouse least opposition. However, irrespective of motivation and content, the principal determinant of success or failure was the rules of parliamentary procedure and their skilful manipulation.

By 1975, SPUC had become a much more effective political pressure group at parliamentary and constituency level. Moreover the Government had been slow to act on the Lane Report recommendations for administrative action and had not even provided an opportunity for it to be discussed in Parliament so that there was still considerable disquiet among M.P.s over

abortion. This disquiet was intensified by the considerable publicity generated by Babies for Burning.⁶ There was then no evidence disputing the claims made in the book.

James White's involvement in abortion can be clearly seen to stem from constituency pressures. Even if White had thought his measure undesirable, and there is no evidence that he did, it is arguable that inaction on his part might well have lost him votes. The general climate of opinion was in fact illustrated by the vast majority in favour of the Bill at second reading. As a result of these pressures and of the very high place he secured in the ballot, the measure White introduced was the most radical attempt to amend the 1967 Act. However, in the event the Bill avoided normal parliamentary procedures. On the Government's suggestion, and on a majority vote in the Commons, it was sent to a select committee. This suggestion may be seen as an attempt to use a traditional technique of 'cooling passions' and of avoiding any situation requiring a decision which could be interpreted as partisan.

Despite the evident anti-abortion bias in the composition of the select committee (which reflected the balance of voting at second reading), the interim report produced in July 1975 reflects an accommodation to the lowest common denominator of agreement within it. The Government's swift move to take action on its recommendations can be viewed as a political recognition

6. Litchfield, M. and Kentish, S.: Babies for Burning, op.cit.

that to do otherwise might well have damaged the party's standing, given that it had advocated its establishment. In the normal course of events, the rules of parliamentary procedure would have meant that both the Bill and the select committee on the Bill would have fallen at the end of the parliamentary session. The Bill did lapse but the Government had given a promise that in that event the Committee would be re-established. Despite pressures to the contrary, it honoured that promise by allowing members to vote on its re-establishment. In doing so, it was again probably more influenced by considerations of political cost and a possible loss of standing had it done otherwise, than by any deep conviction that to do so was right or proper.

The reports of the reconstituted select committee showed a considerable move away from the absolutism of the White Bill to a much more limited and modest approach to the amendment of the 1967 Act despite the fact that they were produced entirely by M.P.s opposed in principle to the 1967 Act. They represented a recognition of the prevailing climate of opinion, an accommodation to and consequent compromise of the many conflicting definitions of and solutions to the 'social problem'.

The final attempt to amend the 1967 Abortion Act was made in 1977 by William Benyon, who had a relatively high place in the ballot and thus a substantial opportunity for making his mark on the statute book. His motivation probably stemmed as much from

personal conviction as from political cost factors. He did not seek to alter the criteria of the grounds governing the availability of legal abortion which suggests that he and his sponsors designed the measure in such a way as to appeal most to Parliament given that there had been a very large vote both in favour of the initial establishment of the select committee and of its re-establishment and that the reports had tried to accommodate divergent views. It is noteworthy that from the beginning, he was willing to compromise with other factions in Parliament in order to construct measures representing majority opinion both in the House and in the larger social environment. Benyon was successful in obtaining a majority at second reading, but it was a very much diminished majority compared to White's.

The Committee stages of Benyon's Bill, commenced earlier than expected as a preceding Bill was withdrawn and another moved (under Lib-Lab pact arrangements). Both proponents and opponents in their respective efforts to shorten or lengthen the available discussion time indulged in considerable parliamentary procedural manoeuvring. Following an unsuccessful attempt to withdraw certain clauses, Benyon's supporters effectively cut short the proceedings by their refusal to debate these clauses. This adroit tactic could not determine the final outcome however; the Bill was too low in the line for debate on the final session day for consideration of private members' Bills and, in the event, extra time was not allowed by the Government, notwithstanding

appeals from some M.P.s, the Church of Scotland and the Archbishop of Canterbury.

There were probably a number of factors influencing its decision, not least that the Cabinet itself opposed the measure; both ministers most directly involved with abortion were against the Bill in principle and a compromise suggested by ministers had been rejected. The medical profession which would 'implement' any Bill was also opposed. Furthermore the weight of public opinion appeared to support the 1967 Act and many influential and powerful bodies had opposed the Bill. The pressure of opinion against extra time was therefore stronger than that in favour thus bringing into force political cost considerations which, on balance, favoured taking refuge behind the normal rules of parliamentary procedure and allowing the Bill to fall.

5. General Conclusions

This case study follows a particular facet of criminal law reform from its embryo stages through all its phases of development to the consequential events following the passage of the 1967 Abortion Act. Such examination clearly illustrates the process of harmonising the initially apparently irreconcilable conflicts and disagreements between interacting individuals and groups into a pragmatic accommodation resulting from compromise which, albeit not the final solution of such

conflicts, nevertheless temporised sufficiently to allow a process of redefining and re-negotiation for further dilution of significant outstanding differences. This two-fold process is clearly exemplified at every significant stage in the history of abortion law reform. The idea of reform per se initially seemed unattainable in a predominantly hostile climate of opinion in which well established and powerful groups opposed such a notion. Yet as early as 1937 a committee was established at least partly as a result of pressure from relatively powerless groups, and its report, although an unequal compromise, did not altogether ignore the views of these groups. The 1967 Act itself was also a compromise but one more favourable to the reformers, whereas by 1974 their views had come to be the most influential but again not all powerful.

The identification and classification of social problems may emanate from a large variety of different social and economic groups, for example from an élitist economic faction, moral entrepreneurs or very often from purely self-interested objectives (such as concern over status) of a reforming group. Furthermore such social problems are very often the recent derivatives of changes in social structure which unfold a subsequent problem imperceptible at first to the majority but discernible to a certain group who consider previous systems of control to be no longer adequate. Perhaps even a crisis has developed as the result of some accident, such as that of

thalidomide, or perhaps there has been a series of incidents, such as the 'abuses' arising from the 1967 Act's implementation, which are thought to require control. In such a case action is required (i.e. from the viewpoint of the concerned individuals or groups) to develop public and other relevant awareness of the particular problem with its subsequent solution or diffusion.

Whilst the generation of awareness is more easily achieved by prestigious persons or groups such as economic élites, moral reformers, status politicians, nevertheless there is no uniformity or homogeneity in the nature and classification of such groupings and the factors affecting their motivation are themselves of considerable diversity in their origin. Indeed, the evidence from this study is that classification of these groups need not be mutually exclusive. For example in both the major reform groups, ALRA and SPUC, there is to be found a mixture of moral enterprise and status politics conducted through symbolic crusades and within the medical profession there is found both self interest and disinterest. Moreover, the expositions and publicity activities of a group will often produce a multi-directional chain reaction among other groups and individuals who, whilst recognising a problem, will have a different conception or definition of the problem and of its solution. The action and interaction of such groupings usually end in some degree of polarisation around different and opposed demands for governmental or legislative action.

The subsequent action of Government, if any, is dependent however on a variety of considerations such as the importance of the problem; the nature and magnitude of the groups calling for change; the support such groups command and the resources they possess and the way in which the Government's image would be affected by ignoring the problem. In these circumstances, government action may sometimes take the form of establishing an examining committee to make recommendations. This may encompass such a long interval of time that the perceived urgency of the problem as such may be diluted by the passage of time and the emergence of other unanticipated events which are of such a magnitude and importance as to cloud the original problem, causing its subsequent removal from the arena of public concern or it may be that weaker groups do not have the resources to sustain their campaign over a substantial period of time. Such delaying tactics of committees of inquiry also serve to remove the possibility of a label of unconcern being attached to the Government but, at the same time, prevent the need for definitive positive action.

In the preceding chapter, a continuum was suggested as a useful means of understanding the emergence of criminal laws for it allows for differentiation between different types of issues and treats the existence of conflict and consensus as problematic. In the evidence presented by this case study, abortion law reform does not appear to fit the extreme conflict model of law emergence. Indeed, the issue appears to be

characterised by the absence of activity by any identifiable dominant economic élite. In addition, if such a group had existed, it is arguable that the 1960s would not have been marked as an era in which activities were directed towards making legal abortion easier and the 1970s by activities aimed at restricting its availability.

The evidence also does not suggest the existence of a general consensus either supporting or opposing reform of the laws. Instead, the emergence of the 1967 Abortion Act and the subsequent developments are better explained by the activities of special interest groups, although the role played by thalidomide, a serious accident, should not be under-emphasised, nor should the publicity given to abuses - a series of incidents - be underplayed regarding the attempted amendments in the 1970s. The groups in question were many and varied. There were established groups, the churches and the medical profession who saw the issue as a threat to their status. There were moral entrepreneurs, ALRA and SPUC, also not unconcerned by status politics. Each of these groups formed their own opinions, definitions and solutions and tried to influence both the general public and Parliament by reasoned arguments, by appeals to emotion and by sheer persistence.

The groups were not equal in power. The better established ones - the doctors and the clerics - carried the social weight of their prestige and influence and also had existing channels of

communication with influential persons inside and outside of Parliament. This differential access to political influence was important to the outcome of the struggle for reform and of its continuing existence after the passage of the 1967 Act and subsequent developments. Pluralistic competition there was, but a competition between originally unequal forces. That ALRA managed to somewhat redress the balance was chiefly due to their persistence (40 years of advocacy) and their sensitive manipulation of both parliamentary procedures and the general social climate.

The emergence of this law was a result of compromise, a law which goes some way towards the state envisaged by its most ardent supporters, but only cautiously and with many safeguards secured by the more powerful groups, especially the medical profession. There was no total victory or defeat; no winners or losers; power and influence shifted during the course of the conflict and each group achieved some but by no means all of its objectives. But the struggle did not end with the passing of legislation and has not ended ten years after its passage. The implementation of the 1967 Act led to further situations in turn defined as social problems.

In this case there was almost overwhelming consensus that a social problem existed and the conflict concerned the proposed solutions to the agreed problem. In the actions that were taken compromise can again be discerned. There was a multiplicity of

groups in existence, the absence of one homogeneous dominant group or of a general all pervasive consensus. However, the alignment of these groupings changed between 1967 and 1977. The medical profession in particular ceased to regard a more 'liberal' abortion law as a threat to its freedom and interests and began to consider it as a freedom enhancing, and therefore status enhancing, measure and threw its considerable weight behind the fight for the 1967 Act's retention. A growing body of public opinion also supported the Act and, although it cannot be claimed that an all pervasive consensus arose, nevertheless it does seem fair to conclude that there was a growing consensus on the desirability of relatively easy access to legal abortion, a growing consensus which emerged as a result of the passage of the 1967 Act.

It should be emphasised that the process of abortion law reform is not being claimed as a general model for criminal law emergence. For the reasons stated in the previous chapter, it was not the intention of this study to try to generate any 'general' theory on the emergence of all laws or even all criminal laws. Whilst this empirical case study did was to examine how helpful to an explanation of abortion law reform were the theories which have been advanced by other writers on emergence of laws and to try to evaluate which, if any, particular theory seemed most appropriate or illuminating to this particular law.

The production of a full account of the socio-political history of abortion law reform tends to confirm the usefulness of

the continuum proposed in the previous chapter. This suggested that different theories of emergence could be applicable to different types of laws, and that the three major theoretical positions used to explain general law emergence need not be mutually exclusive in regard to the explanation of the creation of one type of law, that elements of each might be discernible within any one issue. This is certainly so in the case of abortion.

There was a further ^{ur} purpose in undertaking the study. It was thought that the empirical data and especially the detailed attention paid to the mechanics of the various stages of the legislative process could lead to suggestions for refinement of the theories which have so far been advanced to explain the emergence of criminal laws.

Although Lemert⁷ has previously drawn attention to the fact that reforming groups work in a larger social environment and that the existence of that environment may bring about compromise and accommodation, this study perhaps brings out more clearly the dependence of groups seeking change in the law on the larger environment and that in order to assess the significance of any group it is necessary to examine the interplay of many factors and groups. The organisation of any group is to some extent dependent upon the social environment in which it operates. It is

7. Lemert, E.: Human Deviance, Social Problems and Social Control, op.cit., p.20.

dependent on it for personnel, funds and also for the channels through which it may operate if it is seeking to bring about a new, or to change an old, law. But the environment in which such groups operate is constantly changing and the movement's organisation must be responsive to these changes if it is to survive and succeed, since the changing conditions will affect the movement's support and chances of success. The group, if it is responsive, will alter its tactics and perhaps its goals accordingly.

Furthermore the existence of other groups within the larger system, some of which will share concern over the issue in question but express concern of a different nature, must also be considered for those groups will be competing for support. If a movement fails to appreciate the existence of an opposition, far less underestimates its strength, its chances of success are decreased. These opposition groups may also cause goals to be modified in order to achieve a modicum of success. This goal alteration normally takes the form of a retreat from the initial to more moderate aims but this may be strategic since reform is sometimes effected in a piecemeal fashion.⁸

The existence of the larger environment also affects the groups' tactics for they will seek to shape the social climate of that environment by propaganda, by appeals to the public, and by

8. For examples see Schlesinger, A.M.: The Historical Climate of 'Reform' in Gusfield, J.R. (ed.): Protest Reform and Revolt, John Wiley, New York, 1971, pp.121-134, and Richards, P.G.: Parliament and Conscience, op.cit., esp. p.199.

by communication through the media. This is done to show the legislature the strength of feeling on the issue and to persuade it that, although not all members of the public have necessarily joined the group, many are favourably disposed towards it.

ALRA very largely recognised the importance of these factors, perhaps the most notable example of its failure to do so being the very brief period in its history in 1975 when it almost fell into the trap of believing that the 'rightness' of its cause should be sufficient to influence in itself. SPUC was slow to adapt to the requirements of pressure group activity and it was only after it did so and adopted a more rational evaluation of means and ends that it began to be more effective. The medical profession rarely recognised the importance of the social environment and tended to rely upon its power stemming from its technical expertise; as a result its power, although considerable, could be overcome on occasion by other forces.

The evidence suggests that although the social climate may not be a determining factor in the passage of legislation it is at least an influential one and is recognised as being so by the concerned groups themselves: it points to the need for a clearer recognition of its being so among writers interested in the emergence of criminal law.

So far we have by implication only been discussing activities preceding actual law-making i.e. identifying and defining a problem

area (control over which is sought in legislation) and the subsequent communication and publicity necessary to focus and generate sufficient interest for appropriate action. The translation of all this into law-making is determined however by someone, either the Government or a private member, introducing a Bill in Parliament and, most importantly, obtaining the necessary majority of parliamentary votes to secure its safe passage through both Houses. This latter stage is very much dependent upon the established rules on procedures and on their manipulation by the tactics of the parties and members. Indeed, the private member's Bill is the only procedural means of circumventing Government's unwillingness to take an initiative on certain moral issues.

The skilled draftsmanship required to draw up a new Bill is not an attribute of the majority of members. However, a tactically effective pressure group can diminish this difficulty by carefully pre-planning the desired measure. The successful passage of a Bill is dependent upon its attractiveness to all M.P.s and their subsequent support and also upon the contacts, stature and effective power of its sponsors within the legislature and especially within the cabinet. Not all sponsors anticipate immediate success and many Bills are introduced to publicise and generate interest in an issue so that at a later date, in a more favourable climate (and in the case of a private member's Bill when a high place is secured in the ballot) success is more likely.

The difficulties in parliamentary legislative procedures are not inconsiderable, for example a dissolution of Parliament may occur; or unforeseen emergencies may necessitate the hurried intervention of fresh legislation to the delay or exclusion of existing measures; or the necessary steps for a Bill to become law may take so long that it proves impossible to complete all the legislative stages within one parliamentary session. There is a recognised procedure and time limit for private members' Bills. Moreover, their introduction is often governed by probability and chance because of the draw of the ballot. All these various factors affected the many Bills introduced relating to abortion.

On the other hand, government introduced measures have a much greater chance of success since the cabinet has considerable control over legislative timetabling and it goes without saying that such chance of success increases with the size of the government's majority. This does not imply that governments are insensitive to outside opinion. On the contrary, many groups who are likely to be affected by proposed legislation often exert counter influence upon the government, with some success. Indeed, if the conflicting groups in any issue are numerous and/or powerful, modifications and amendments will generally be made to attempt a reconciliation of the diverging forces or even final withdrawal of the controversial Bill. However, notwithstanding all this, it is axiomatic that the degree of success of a proposed Bill will be directly dependent upon the status of its initiators and supporters. The more powerful groups

do have established contacts with the media, legislature and other corridors of power where they 'count' because they can threaten to withdraw their support, or, in the case of enabling legislation as in abortion, not to implement the provisions of the measure on the lines Parliament wishes.

Nevertheless, less powerful groups can and do exert influence. For example petitions, group opinion and general public representations, although in themselves unquantifiable, are nonetheless considerable in their effectiveness in shaping government attitudes. Governmental decisions on whether or not to afford Bills extra parliamentary time and, for example, to establish the Lane Committee were effected by such influences. In this respect, constituency opinion cannot be disregarded. A member may rarely be persuaded to vote against deep personal convictions. On the other hand, he may be persuaded to vote when he has no strong opinions or he may be persuaded to abstain when local pressure is contrary to his own mild inclinations. James White provides us with an obvious example of such persuasion.

The long period of time involved in the legislative process, together with the susceptibility of Governments and private members to pressure of opinion creates many opportunities for the successful exertion of influence on the final outcome of measures. There can be no doubt that the Government, by virtue of its control over the legislative timetable, and the facts that in matters of 'party policy' it invariably controls the preparation of Bills, and that it alone has the services of

professional draftsmen at its disposal, is in the best position to influence the shape and form of the Act. But that control is not absolute and is capable of being influenced. However, it is true that the private members' Bill is perhaps more susceptible to influence with resultant compromise as in the case of the Abortion Act 1967. The shape and effectiveness of a Bill is to a considerable extent determined by the amount of time afforded to its passage. The divergence between the original and final form is usually a directly proportional function of this time and of the concessions to conflicting groups and public opinion. Again the changes which took place in David Steel's Bill clearly demonstrate the importance of this time factor.

The use of such inevitable compromise as an expedient in controversial issues is a well established custom and practice of experienced politicians. The task of campaigning bodies is to influence public and parliamentary opinion but when the campaign reaches the parliamentary stages, then the rules governing parliamentary procedure and an examination of how they may be affected cannot be discounted in any study of emergence of law.

The evidence from this study not only suggests the need for consideration of these procedures, but especially suggests that extreme conflict theory may be exaggerated. For it to be correct, each and every criminal law would have to result from the exercise of power by one homogeneous power élite. The case study of abortion law reform provides further evidence that this need not be so and, in addition, that legislation can be marked by

by compromise rather than by outright victory. The view that this is a myth cannot be supported in the face of empirical evidence to the contrary. Moreover, the evidence presented in this study suggests that the processes involved in legislation and the rules governing its procedure perhaps lend themselves to compromise and are not the preserve of one dominant elite. Nevertheless, the evidence is suggestive and not conclusive for the study was limited to one type of law, criminal law, and to only one part of that body of law, the law regulating abortion, and only to its development over a comparatively short period of time.

Consequently no attempt is being made to expound a theory to explain the emergence of all law or even of all criminal law. Instead, all that is being suggested is that in understanding the emergence of specific laws it may be helpful to employ the notion of a continuum on which to place different types of issues, that conflict and consensus be treated as problematic concepts and that it is essential to examine the institutional arrangements for law making existing in a particular society.

APPENDIX I

- (1) Joseph Reeves' Bill
- (2) Lord Amulree's Bill
- (3) Kenneth Robinson's Bill
- (4) Renée Short's Bill
- (5) Lord Silkin's Bill (1)
- (6) Lord Silkin's Bill (2)
- (7) Simon Wingfield Digby's Bill
- (8) David Steel's Bill
- (9) The Abortion Act 1967
- (10) Bryant Godman Irvine's Bill
- (11) John Hunt's Bill
- (12) Michael Gryll's Bill
- (13) James White's Bill
- (14) William Benyon's Bill

(1) Joseph Reeves' Bill

A

B I L L

TO

Amend the law relating to abortion.

A.D. 1952

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. For the removal of doubt there shall be added the following proviso to section fifty-eight of the Offences Against the Person Act, 1861 (which makes it a felony to administer drugs or use instruments to procure abortion) -

Amendment
of s. 58
of 24 &
25 Vict.
c.100

'Provided that -

- (a) no person shall be found guilty of an offence under this section unless it is proved that the act charged was not done in good faith for the purpose of preserving the life of the mother;
- (b) no registered medical practitioner who acts with the concurring opinion of a second registered medical practitioner shall be found guilty of an offence under this section unless it is proved that the act charged was not done in good faith for the purpose of preventing injury to the mother in body or health.'

2. This Act may be cited as the Abortion Act, 1952.

Short title.

(2) Lord Amulree's Bill

A

B I L L

INTITULED

An Act to amend the law relating to abortion. A.D. 1954

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. For the removal of doubt there shall be added the following proviso to section fifty-eight of the Offences Against the Person Act, 1861 (which makes it a felony to administer drugs or use instruments to procure abortion) -

Amendment
of s. 58
of 24 &
25 Vict.
c.100.

'Provided that -

- (a) no registered medical practitioner shall be found guilty of an offence under this section unless it is proved that the act charged was not done for the purpose of preserving the life of the mother;
- (b) no registered medical practitioner who acts with the concurring opinion of a second registered medical practitioner shall be found guilty of an offence under this section unless it is proved that the act charged was not done for the purpose of preventing injury to the mother in body or health.'

2. This Act may be cited as the Abortion Act, 1954.

Short title.

(3) Kenneth Robinson's Bill

A

B I L L

TO

Amend the law relating to the termination of pregnancy by registered medical practitioners.

A.D. 1961

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. Notwithstanding anything in section fifty-eight of the Offences Against the Person Act, 1861 (which makes it a felony to administer drugs or use instruments to procure an abortion) it shall be lawful for a registered medical practitioner to terminate pregnancy in good faith -

Termination
of preg-
nancy in
good faith

- (a) for the purpose of preserving the life of the patient; or
- (b) in the belief that there would be grave risk of serious injury to the patient's physical or mental health if she were left to give birth to and care for the child; or
- (c) in the belief that there would be grave risk of the child being born grossly deformed or with a physical or mental abnormality which would be of a degree to require constant hospital treatment or special care throughout life; or
- (d) in the belief that the patient became pregnant as the result of intercourse which was an offence under section one, five, ten or eleven of the Sexual Offences Act, 1956, or that the patient is a person of unsound mind.

2. A termination of pregnancy under paragraphs (b) to (d) inclusive of section one of this Act shall require the concurring opinion or advice, which must be based upon a personal examination of the patient, of a second registered medical practitioner, and shall not be performed after the end of the thirteenth week of pregnancy.

Requirement
of second
medical
opinion.

3. The burden of proving that a termination of pregnancy performed by a registered medical

Burden of
proof.

practitioner with any necessary concurrence or advice of a second registered medical practitioner, was not performed in good faith for the purpose or in the belief in this Act, or within the time permitted for terminating pregnancy shall in any prosecution rest upon the Crown. specified

4. Nothing in this Act shall affect the law relating to the requirement of consent to surgical operations. Consent to surgical operation unaffected.

5. (1) This Act may be cited as the Medical Termination of Pregnancy Act, 1961. Short title and extent.
- (2) This Act shall not extend to Northern Ireland.

(4) Renée Short's Bill

A

B I L L

TO

Amend the law on abortion.

A.D. 1965

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. Notwithstanding anything in section 58 of the Offences Against the Person Act, 1861 (which makes it a felony to administer drugs or use instruments to procure abortion), it shall be lawful for a registered medical practitioner to terminate pregnancy in good faith:-

Abortion
lawful in
certain
circumstances.
1861 c.100.

- (a) for the purpose of preserving the life of the patient; or
- (b) in the belief that there would be grave risk of serious injury to the patient's physical or mental health if she were left to give birth to and care for the child; or
- (c) in the belief that there would be grave risk of the child being born grossly physically deformed, or severely mentally abnormal; or
- (d) in the belief that the patient became pregnant as the result of intercourse which was an offence under sections 1 to 11 inclusive of the Sexual Offences Act 1956.

1956 c.59.

2. A termination of pregnancy under paragraphs (b) (c) or (d) of section 1 of this Act shall require the concurring opinion or advice, which must be based on a personal examination of the patient, of a second registered medical practitioner and shall not be performed after the end of the thirteenth week of pregnancy.

Second
opinion.

3. The burden of proving that a termination of pregnancy performed by a registered medical practitioner with any necessary concurrence or

Burden of
proof.

advice of a second registered medical practitioner was not performed in good faith for the purpose or in the belief specified in this Act or within the time permitted for terminating pregnancy shall in any prosecution rest upon the Crown.

4. Nothing in this Act shall affect the law relating to the requirements of consent to surgical operations.

Consent to surgical operations.

5. (1) This Act may be cited as the Medical Termination of Pregnancy Act 1965.

Short title and extent.

(2) This Act shall not extend to Northern Ireland.

(5) Lord Silkin's Bill (1)

A

B I L L

INTITULED

An Act to amend the law relating to termination of pregnancy by registered medical practitioners.

A.D. 1965

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. It shall be lawful for a registered medical practitioner to terminate pregnancy in good faith -

Termination
of pregnancy
by registered
medical
practitioner.

- (a) in the belief that if the pregnancy were allowed to continue there would be grave risk of the patient's death or of serious injury to her physical or mental health resulting either from giving birth to the child or from the strain of caring for it; or
- (b) in the belief that if the pregnancy were allowed to continue there would be grave risk of the child being born grossly deformed or with other serious physical or mental abnormality; or
- (c) in the belief that the health of the patient or the social conditions in which she is living (including the social conditions of her existing children) make her unsuitable to assume the legal and moral responsibility for caring for a child or another child as the case may be; or
- (d) in the belief that the patient became pregnant as the result of intercourse which was an offence under sections one to eleven inclusive of the Sexual Offences Act 1956 or that the patient is a person of unsound mind.

1956
c.69.

2. A termination of pregnancy under paragraph (c) or (d) of section 1 of this Act shall not be performed after the end of the sixteenth week of pregnancy.

Pregnancy
not to be
terminated
after six-
teenth week.

3. In a prosecution under section 58 of the Offences Against the Person Act 1861 (which makes it a felony to administer drugs or use instruments to procure an abortion) the burden of proving that a termination of pregnancy performed by a registered medical practitioner was not performed in good faith in the belief specified in this Act, or within the time specified for terminating pregnancy, shall rest upon the Crown.

Burden
of proof
1861
c.100.

4. Nothing in this Act shall affect the law relating to the requirement of consent to surgical operations.

Consent

5. (1) This Act may be cited as the Abortion Act 1965.
- (2) This Act shall not extend to Northern Ireland.

Short title
and extent.

(6) Lord Silkin's Bill (2)

A

B I L L

INTITULED

An Act to amend the law relating to termination of pregnancy by registered medical practitioners. A.D. 1966

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence or crime of abortion by reason of the termination of a pregnancy by a registered medical practitioner if the practitioner is of the opinion, formed in good faith, that the termination of the pregnancy is necessary on any one or more of the following grounds, that is to say -

Medical termination of pregnancy.

- (a) the continuance of the pregnancy would involve serious risk to the life or of grave injury to the health whether physical or mental of the pregnant woman whether before at or after the birth of the child; or
- (b) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to deprive it of any prospect of reasonable enjoyment of life;

or that the pregnant woman is a defective or became pregnant while under the age of sixteen

(2) Except in a case where the practitioner is of the opinion, formed in good faith, that the termination is immediately necessary in order to save the life of the pregnant woman (and certifies his opinion in writing either before or after carrying out the treatment), the following conditions must be complied with in connection with any treatment for the termination of a pregnancy, that is to say -

- (a) the treatment must be carried out by a practitioner who holds an appointment as registrar or in a superior capacity under a hospital board, being an appointment involving the practice of gynaecology;
- (b) the treatment must be carried out in a hospital

vested in the Minister of Health or the Secretary of State under the National Health Service Acts, or in a place for the time being approved for the purposes of this section by the Minister of Health or the Secretary of State;

- (c) the opinion mentioned in subsection (1) of this section must be certified in writing by the practitioner who carried out the treatment before the treatment is begun;
- (d) another registered medical practitioner must be of the same opinion, formed in good faith and certified as aforesaid, as that specified in the certificate of the practitioner who carries out the treatment; and
- (e) there has been before treatment an application in writing by the pregnant woman, or, if under sixteen years of age, of the pregnant girl and one of her parents or of the pregnant girl and her guardian for the termination of the pregnancy.

(3) In determining the matters referred to in paragraph (a) of subsection (1) of this section, a registered medical practitioner may take into account such circumstances, whether past, present or prospective, as are in his opinion relevant to his patient's physical or mental health.

2. (1) The Minister of Health may by regulations made by statutory instrument make provision -

Notific-
ation

- (a) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination, and such other information relating to the termination as may be prescribed by the regulations, to the Chief Medical Officer of the Ministry of Health within such period as may be so prescribed; and
- (b) with respect to the disposal of certificates given for the purposes of section 1 of this Act.

(2) The information furnished in pursuance of regulations under subsection (1) of this section shall not be made public or divulged by the Chief Medical Officer of the Ministry of Health to any person other than a police officer duly authorised to obtain such information.

(3) Failure to comply with the requirements of regulations under subsection (1) of this section shall be punishable on summary conviction by a fine not exceeding one hundred pounds or in case of a second or subsequent conviction by imprisonment for a term not exceeding three months or by a fine not exceeding two hundred pounds or both.

(4) In the application of this section to Scotland for any reference to the Minister or Ministry of Health there shall be substituted a reference to the Secretary of State.

3. In this Act, unless the context otherwise requires, the following expressions have meanings hereby assigned to them, that is to say - Interpretation.

'Defective' means in England and Wales a person suffering from subnormality within the meaning of section 4 of the Mental Health Act 1959 or in Scotland a person suffering from mental deficiency within the meaning of section 6 of the Mental Health (Scotland) Act 1960; 1959 c.72.
1960 c.61.

'Hospital Board' means a Board constituted under the National Health Service Acts as a Hospital Board or as the Board of Governors of a teaching hospital;

'the National Health Service Acts' means the National Health Service Acts 1946 to 1964 or the National Health Service (Scotland) Acts 1947 to 1961; and

'Registered medical practitioner' means a practitioner registered under the Medical Act 1956 or legislation amending or replacing it. 1956 c.76.

4. (1) This Act may be cited as the Abortion Act 1966. Short title and extent.
(2) This Act shall not extend to Northern Ireland.

5. (1) Nothing in this Act shall affect the provisions of the Infant Life (Preservation) Act 1929 (protecting the life of the viable foetus). Supplementary provisions 1929 c.34.

(2) For the purposes of the law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section 1 of this Act.

6. In this Act, the following expressions have meanings hereby assigned to them:- Interpretation.

'the law relating to abortion' means sections 58 and 59 of the Offences Against the Person Act 1861, and any rule of law relating to the procurement of abortion; 1861 c.100.

'the National Health Service Acts' means the National Health Service Acts 1946 to 1966 or the National Health Service (Scotland) Acts 1947 to 1966.

7. (1) This Act may be cited as the Abortion Act 1967.

Short title,
commencement
and extent.

(2) This Act shall come into force on the expiration of the period of six months beginning with the date on which it is passed.

- (3) This Act does not extend to Northern Ireland.

(7) Simon Wingfield Digby's Bill

A

B I L L

TO

Amend and clarify the law relating to termination of pregnancy by registered medical practitioners. A.D. 1966

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. Subject to the provisions of this Act, it shall be lawful for a registered medical practitioner to terminate a pregnancy on any one or more of the following grounds: Medical termination of pregnancy.

- (a) for the purpose of preserving the life of the patient;
- (b) in the belief that there would be a substantial risk of serious injury to the physical or mental health of the patient or both if her pregnancy were not terminated;
- (c) in the belief that it is as probable as not that the child if born would suffer from such physical or mental abnormalities or both as to deprive it of any prospect of reasonable enjoyment of life.

2. The provisions of section 1 of this Act shall not apply to the termination of any pregnancy unless prior to the said termination - Supplementary provisions as to termination of pregnancy.

- (a) two registered medical practitioners, one of whom may be the practitioner terminating the said pregnancy and both of whom are registered medical practitioners falling within one or more of the classes or descriptions of persons specified in Schedule 1 to this Act, have certified in writing that in their opinion the termination of the pregnancy was necessary on one or more of the grounds specified in section 1 of this Act; and
- (b) the written consent of the woman whose pregnancy is to be terminated or if she be under the age of sixteen years the written consent of one of her parents or of her guardian has been obtained.

3. (1) Within seven days of terminating a pregnancy the registered medical practitioner terminating the same shall send or cause to be sent to the Chief Medical Officer of the Ministry of Health the documents and information specified in Schedule 2 to this Act.

Notification

(2) Subject as hereinafter provided, any person failing to comply with the provisions of subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5 for a first offence or £100 for a second or subsequent offence.

(3) A person shall not be guilty of an offence under subsection (2) of this section if he shows -

- (a) that there was reasonable cause for his failure to comply with the aforesaid requirements within the said period of seven days; and
- (b) that he did comply with them so soon as was reasonably practicable thereafter.

4. In a prosecution under section 58 of the Offences Against the Person Act 1861 (which makes it a felony to administer drugs or use instruments to procure an abortion) the burden of proving that a termination of pregnancy performed by a registered medical practitioner was not performed on any one or more of the grounds specified in section 1 of this Act shall rest upon the Crown.

Prosecution
under s. 58
of Act of 1861
1861 c.100.

5. The 'Minister' in this Act means the Minister of Health.

Interpret-
ation.

6. (1) This Act may be cited as the Medical Termination of Pregnancy Act 1966.

Short title
and extent.

(2) This Act shall not extend to Northern Ireland.

(8) David Steel's Bill

A

B I L L

TO

Amend and clarify the law relating to termination of pregnancy by registered medical practitioners. A.D. 1968

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if that practitioner and another registered medical practitioner are of the opinion, formed in good faith -

Medical
termination
of preg-
nancy.

- (a) that the continuance of the pregnancy would involve serious risk to the life or of grave injury to the health, whether physical or mental, of the pregnant woman whether before, at or after the birth of the child; or
- (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or
- (c) that the pregnant woman's capacity as a mother will be severely overstrained by the care of a child or of another child as the case may be; or
- (d) that the pregnant woman is a defective or became pregnant while under the age of sixteen or became pregnant as a result of rape.

(2) Except as provided by subsection (3) of this section any treatment for the termination of pregnancy must be carried out in a hospital vested in the Minister of Health or the Secretary of State for Scotland under the National Health Service Acts, or in a registered nursing home, or in a place for the time being approved for the purposes of this section by the Minister or the Secretary of State.

(3) Subsection (2) of this section, and so much of subsection (1) as relates to the opinion of another registered medical practitioner, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary in order to save the life of the pregnant woman.

(4) A termination of pregnancy performed on the ground of rape shall require the certificate of a registered medical practitioner consulted by the patient freshly after the alleged assault that there was then medical evidence of sexual assault upon her.

(5) A termination of pregnancy performed upon a girl under the age of sixteen shall require her express consent in addition to a necessary consent of her parent or guardian.

2. (1) The Minister of Health in respect of England and Wales, and the Secretary of State in respect of Scotland, may by statutory instrument make regulations to provide - Notification

- (a) for requiring any such opinion as is referred to in section 1 of this Act to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;
- (b) for requiring any registered medical practitioner who terminates a pregnancy other than in a hospital to give notice of the termination and such other information relating to the termination as may be prescribed;
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations under subsection (1) of this section shall be collected solely by the Ministry of Health or the Scottish Office.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(4) Any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3. (1) Nothing in this Act shall affect the provisions of the Infant Life (Preservation) Act 1939 (protecting the life of the viable foetus).

Savings.
1939 c.34.

(2) For the purposes of the law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section 1 of this Act.

4. In this Act, the following expressions have meanings hereby assigned to them:-

Interpretation.

'defective' means, in relation to England and Wales, a person suffering from severe subnormality as defined by subsection (2) of section 4 of the Mental Health Act 1959 and, relation to Scotland, a person suffering from mental deficiency of the degree described in subsection (7) of section 96 of the Mental Health (Scotland) Act, 1960;

1959 c.72.

1960 c.61.

'registered nursing home' means a nursing home registered under the Public Health Act 1936, the Public Health (London) Act 1936, or the Nursing Home Registration (Scotland) Act 1938, and a private hospital registered under the Mental Health (Scotland) Act 1960, or legislation amending or replacing them;

1936 c.49.

1936 c.50.

1938 c.73.

'the law relating to abortion' means sections 58 and 59 of the Offences Against the Person Act 1861, and any rule of law relating to the procurement of abortion;

1861 c.100.

'the National Health Service Acts' means the National Health Service Acts 1946 to 1966 or the National Health Service (Scotland) Acts 1947 to 1966.

5. (1) This Act may be cited as the Medical Termination of Pregnancy Act 1966.

Short title
and extent.

(2) This Act does not extend to Northern Ireland.

(9) 1967 Abortion ActABORTION ACT 19671967 CHAPTER 87

An Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners (27th October 1967).

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith -

Medical
termination
of preg-
nancy.

- (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
- (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Minister of Health or the Secretary of State under the National Health Service Acts, or in a place for the time being approved for the purposes of this section by the said Minister or the Secretary of State.

(4) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent

injury to the physical or mental health of the pregnant woman.

2. (1) The Minister of Health in respect of England and Wales, and the Secretary of State in respect of Scotland, shall by statutory instrument make regulations to provide -

Notification

- (a) for requiring any such opinion as is referred to in section 1 of this Act to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;
- (b) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed;
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (b) of subsection (1) of this section shall be notified solely to the Chief Medical Officers of the Ministry of Health and the Scottish Home and Health Department respectively.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(4) Any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3. (1) In relation to the termination of a pregnancy in a case where the following conditions are satisfied, that is to say -

Application
of Act to
visiting
forces, etc.

- (a) the treatment for termination of the pregnancy was carried out in a hospital controlled by the proper authorities of a body to which this section applies; and
- (b) the pregnant woman had at the time of the treatment a relevant association with that body; and

- (c) the treatment was carried out by a registered medical practitioner or a person who at the time of the treatment was a member of that body appointed as a medical practitioner for that body by the proper authorities of that body,

this Act shall have effect as if any reference in section 1 to a registered medical practitioner and to a hospital vested in a Minister under the National Health Service Acts included respectively a reference to such a person as is mentioned in paragraph (c) of this subsection and to a hospital controlled as aforesaid, and as if section 2 were omitted.

(2) The bodies to which this section applies are any force which is a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 c.67. 1952 and any headquarters within the meaning of the Schedule to the International Headquarters and Defence Organisations Act 1964; and for the purposes of this section - 1964 c.5.

- (a) a woman shall be treated as having a relevant association at any time with a body to which this section applies if at that time -

(i) in the case of such a force as aforesaid, she had a relevant association within the meaning of the said Part I with the force; and

(ii) in the case of such a headquarters as aforesaid, she was a member of the headquarters or a dependant within the meaning of the Schedule aforesaid of such a member; and

- (b) any reference to a member of a body to which this section applies shall be construed -

(i) in the case of such a force as aforesaid, as a reference to a member of or of a civilian component of that force within the meaning of the said Part I; and

(ii) in the case of such a headquarters as aforesaid, as a reference to a member of that headquarters within the meaning of the Schedule aforesaid.

4. (1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection:

Conscientious objection to participation in treatment.

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

(3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by subsection (1) of this section.

5. (1) Nothing in this Act shall affect the provisions of the Infant Life (Preservation) Act 1929 (protecting the life of the viable foetus).

Supplementary provisions
1929 c.34.

(2) For the purposes of the law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section 1 of this Act.

6. In this Act, the following expressions have meanings hereby assigned to them:-

Interpretation.

'the law relating to abortion' means sections 58 and 59 of the Offences Against the Person Act 1861, and any rule of law relating to the procurement of abortion;

1861 c.100.

'the National Health Service Acts' means the National Health Service Acts 1946 to 1966 or the National Health Service (Scotland) Acts 1947 to 1966.

7. (1) This Act may be cited as the Abortion Act 1967.

Short title, commencement and extent.

(2) This Act shall come into force on the expiration of the period of six months beginning with the date on which it is passed.

(3) This Act does not extend to Northern Ireland.

SCHEDULES

SCHEDULE 1

CERTIFICATES REQUIRED UNDER SECTION 2

The persons capable of giving the certificates required under section 2 of this Act shall be the registered medical practitioner of the woman whose pregnancy is to be terminated and any one of the persons specified in the list hereunto appended or any two of the persons so specified:-

a person employed under the National Health Service or in private practice as a consultant in gynaecology, psychiatry or surgery;

a person employed under the National Health Service for full time service in a hospital who has been qualified and registered as a medical practitioner for not less than three years;

a person employed under the National Health Service for part-time service in a hospital who has been qualified and registered as a medical practitioner for not less than three years;

such other persons as the Minister may from time to time by order prescribe.

SCHEDULE 2

DOCUMENTS AND INFORMATION REQUIRED UNDER SECTION 3

1. The documents referred to in section 3 of this Act shall be -
 - (a) a document signed by both registered medical practitioners who have certified under section 2 of this Act stating the ground or grounds upon which the termination of pregnancy was in their opinion necessary and the reasons why it was in their opinion necessary; or
 - (b) if the said practitioners differ either as to the grounds or reasons, two documents, one signed by each and specifying the ground or grounds upon which and reasons why it was in his opinion necessary.
2. The information referred to in section 3 of this Act shall consist of -
 - (a) the name and permanent address of the woman whose pregnancy has been terminated;
 - (b) the nature of the operation performed;

- (c) the estimated duration of the pregnancy at the date when it was terminated;
- (d) the date on which and place at which the pregnancy was terminated;
- (e) the name of the registered medical practitioner who terminated the said pregnancy;
- (f) such further information as the Minister may from time to time by order prescribe.

(10) Bryant Godman Irvine's Bill

A

B I L L

TO

Amend the Abortion Act 1967.

A.D. 1970

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. Subsection (1) of section 1 of the Abortion Act 1967 shall be amended by leaving out the words 'by a registered medical practitioner if two registered medical practitioners' and inserting in place thereof the words 'by or under the supervision of a consultant gynaecologist in the National Health Service or a medical practitioner of equivalent status approved by the Secretary of State for Social Services for the purpose of this Act, if the medical practitioner carrying out or supervising the operation and another medical practitioner'.

Amendment
of Abortion
Act 1967.

1967 c.87.

2. (1) This Act may be cited as the Abortion Law (Reform) Act 1970.

Short title,
citation
and
extent.

(2) The Abortion Act 1967 and this Act may be cited together as the Abortion Acts 1967 and 1970.

(3) This Act does not extend to Northern Ireland.

(11) John Hunt's Bill

A

B I L L

TO

Prohibit, subject to certain exceptions, the charging of fees for referring or recommending persons to medical services or treatment.

A.D. 1972

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Subject to the provisions of the next following subsection, it shall be an offence for any person to charge or to seek to charge a fee for or in connection with referring or recommending a person to a medical practitioner, hospital, nursing home or other establishment offering medical services.

Fees for
referral
to medical
services.

(2) The provisions of the foregoing subsection shall not apply to a referral or recommendation made by a registered medical practitioner or by an accredited official or representative of a charitable body.

2. Any person found guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding £400 or to imprisonment for a term not exceeding six months, or both.

Penalties.

3. In this Act -

'referring' includes introducing, and
'referral' shall be construed accordingly;

'person' includes a corporate person.

Interpret-
ation.

4. (1) This Act may be cited as the Medical Services (Referral) Act 1972.

Citation
and
extent.

(2) This Act does not extend to Northern Ireland.

(12) Michael Gryll's Bill

A

B I L L

TO

Regulate the referral to, and recommendation of, medical or other services in connection with treatment authorised by the Abortion Act 1967, where such referral or recommendation is made for reward otherwise than by a registered medical practitioner.

A.D. 1974

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) No person other than -

- (a) a registered medical practitioner; or
- (b) a person for the time being approved for the purposes of this section by the Secretary of State;

Regulation
of the
provision
of advice
and infor-
mation with
respect to
treatment
under the
Abortion
Act 1967.

shall give to any other person any advice or information to which this section applies in circumstances in which he receives or expects payment (whether from the person to whom the advice or information is given or from any other person, and whether under an agreement or otherwise) for so doing, or for providing, in connection with giving that advice, or information, any other advice, information, service, facility or article.

(2) This section applies to any advice or information (whether given to the woman to whose circumstances it relates or to any other person) -

- (a) indicating a person to whom a woman may apply for the purpose of obtaining, or fulfilling the requirements for obtaining, treatment for the termination of pregnancy in accordance with the Abortion Act 1967;
- (b) indicating a hospital or place in which such treatment may be provided; or
- (c) indicating a person from whom advice or information to the effect mentioned in paragraph (a) or (b) above may be obtained.

(3) A person who contravenes subsection (1) above shall be guilty of an offence and liable -

(a) on summary conviction to a fine not exceeding £400;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

2. (1) This Act may be cited as the Abortion (Amendment) Act 1974.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(3) This Act does not extend to Northern Ireland.

Citation,
commencement
and
extent.

(13) James White's Bill

A

B I L L

TO

Amend the Abortion Act 1967 and to make further provision with respect to the termination of pregnancy and matters consequential thereto.

A.D. 1975

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

Termination of Pregnancy

1. Section 1 of the Abortion Act 1967 (hereinafter referred to as 'the principal Act') shall be read and have effect as if -

Amendment
of section
1 of
Abortion
Act 1967.
1967 c.87.

(a) in subsection (1) thereof -

(i) after the words 'two registered medical practitioners' there were inserted the words 'who are not normally in practice together and of whom at least one has been registered for not less than five years'; and

(ii) in place of paragraph (a) there were substituted the following paragraph -

'(a) that the continuance of the pregnancy would involve:-

(i) grave risk to the life of the pregnant woman; or

(ii) risk of serious injury to the physical or mental health of the pregnant woman or any existing children of her family; or'; and

(b) after subsection (3) thereof there were inserted the following subsection, namely:-

'(3A) Without prejudice to any regulations which may be made by the Secretary of State under any enactment, it shall be a pre-condition of approval of a place for the purposes of this section that there shall be

on the staff of the said place a consultant medical adviser who shall be -

- (a) a consultant within the National Health Service; or
- (b) a person who has been such a consultant; or
- (c) a registered medical practitioner approved by the Secretary of State as being of like status to such a consultant;

whose duty it shall be to superintend and approve in relation to the said place -

- (a) clinical procedures;
- (b) the appointment of medical staff, sessional or otherwise; and
- (c) the use of the said place by any registered medical practitioner for treatment of any person under this Act.'

2. Notwithstanding anything in the principal Act, save as provided in subsection (4) of section 1 thereof, it shall be unlawful to carry out any treatment for the termination of a pregnancy unless (except in the case of a woman whom he believes to be of British nationality) the person carrying out the treatment is reasonably satisfied that during the period of twenty weeks immediately preceding the carrying out of the treatment the pregnant woman has been resident in the United Kingdom. Restrictions on medical termination of pregnancy.

3. Notwithstanding anything in section 2 (Notification) of the principal Act or in any regulations made thereunder any person who terminates a pregnancy shall, with the written consent of the woman who has been treated, give notice of the termination and of any relevant details thereof to her regular medical practitioner. Notification of termination of pregnancy.

4. It shall be an offence -

- (a) for any person to offer or give to any other person any fee or other reward, whether tangible or otherwise, in consideration of that other person referring or having referred any pregnant woman, for the purpose of obtaining treatment for termination of pregnancy, to any registered medical practitioner, any hospital or any place approved for the purposes of section 1 of the principal Act; and

Inducements not to be offered or accepted.

- (b) for any person to demand or accept any such fee or other reward in respect of so referring or of having so referred any pregnant woman.

5. (1) No person other than -

- (a) a registered medical practitioner; or
- (b) a person for the time being approved for the purposes of this section by the Secretary of State,

Regulation
of advice
on obtaining
treatment
for term-
ination of
pregnancy.

shall give to any other person any advice or information to which this section applies in circumstances in which he receives or expects payment (whether from the person to whom the advice or information is given or from any other person, and whether under an agreement or otherwise) for so doing, or for providing, in connection with giving that advice or information, any other advice, information, services, facility or article.

(2) No person shall advise a pregnant woman to seek treatment for termination of pregnancy at a place in which that person has any financial interest, direct or otherwise.

(3) No registered medical practitioner or person approved under subsection (1) of this section shall give to any other person under the age of 16 any advice or information to which this section applies otherwise than in the presence of that other person's parent or guardian if such parent or guardian can reasonably be ascertained and is willing and able to be present.

(4) A person giving to any pregnant woman any advice or information to which this section applies shall at the same time give her advice as to available alternatives to such treatment.

(5) This section applies to any advice or information (whether given to the woman to whose circumstances it relates or to any other person) -

- (a) indicating a person to whom a woman may apply for the purposes of obtaining, or fulfilling the requirements for the purpose of obtaining, treatment for the termination of pregnancy in accordance with the provisions of the principal Act;
- (b) indicating a hospital or place in which such treatment may be provided; or
- (c) indicating a person from whom advice or information to the effect mentioned in paragraph (a) or (b) above may be obtained;

and any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence.

6. (1) No person being a registered medical practitioner or a person approved by the Secretary of State for the purposes of the foregoing section shall use any premises for the purpose of -

Approval
and reg-
ulation of
premises.

- (a) giving treatment for the termination of pregnancy; or
- (b) giving advice or information to which section 5 of this Act applies;

unless those premises have been approved by the Secretary of State for the purposes of this section and are used in compliance with regulations made by the Secretary of State and for the time being in force relating to the use of such premises.

(2) Any person applying to the Secretary of State for the approval of premises for the purpose of this section shall disclose to the Secretary of State full details of any financial arrangement or other agreement which he may have with any persons or places approved under section 1 (3) of the principal Act or this section and the Secretary of State shall be entitled, when considering any application for approval under this section, to take any such arrangement or other agreement into account.

(3) Without prejudice to the foregoing provisions of this section and of any regulations made thereunder, the use of any such premises as aforesaid shall be subject to the conditions for use of such premises set out in Schedule 1 to this Act.

(4) Any person who contravenes the provisions of this section or of any of the conditions set out in Schedule 1 to this Act shall be guilty of an offence.

7. Notwithstanding anything in any enactment it shall be an offence for any person to carry out, or assist in the carrying out of, treatment for termination of pregnancy in any case in which the woman has been pregnant for 20 weeks or more.

Treatment
prohibited
in certain
cases.

Provided that this section shall not apply in any case in which -

- (a) the woman has been pregnant for not more than 24 weeks; and
- (b) a consultant within the National Health Service is reasonably satisfied that the woman is

pregnant of a child which would be born with a major disability, whether physical or mental.

PART II

Experiments on Foetus and Foetal Material

8. (1) No person shall carry out an experiment of any kind on human foetus or foetal material which has become available as a result of the termination of a pregnancy otherwise than in accordance with the conditions laid down in Schedule 2 to this Act.

Conditions
for exper-
iments on
foetus.

(2) The Secretary of State may make regulations for the purpose of the application and enforcement of the provisions of the said Schedule and for amending or adding to the said conditions.

(3) Any person who contravenes the provisions of this section or of any of the said conditions for the time being in force shall be guilty of an offence.

9. (1) The appropriate hospital authority having jurisdiction over any institution to which women in childbirth are customarily admitted shall, for the purposes of ensuring compliance within that institution, with the provisions of this part of this Act, establish an Ethical Committee which must include at least one doctor experienced in clinical investigation.

Ethical
Committees.

(2) It shall be the duty of every Ethical Committee to supervise the disposal of foetus and foetal material which has become available as a result of the termination of a pregnancy and the use thereof for purposes of research and experiment.

PART III

Miscellaneous

10. It shall be an offence for any person to publish or cause to be published the identity, or any information or particulars calculated to lead to the identification of -

Restriction
on public-
ation of
identity.

- (a) any woman who has been the subject of treatment for the termination of pregnancy;
- (b) any woman who has sought or received advice or information to which section 5 of this Act applies; or
- (c) any person who has given, or who has been summoned to give, evidence in any proceedings under the principal Act or this Act.

11. Where in any criminal proceedings brought under the principal Act or this Act it has been established to the satisfaction of the court that the accused person has carried out or has assisted at the carrying out of treatment for the termination of pregnancy, or has given advice or information to which section 5 of this Act applies, the onus of proof that the requirements of the principal Act or of this Act or of any regulations made thereunder, as the case may be, have been complied with in respect of any matter shall rest on the accused person.

Proof of compliance.

12. Any person who contravenes any of the provisions of this Act or of the principal Act as amended by this Act shall be guilty of an offence and shall be liable -

Penalties.

- (a) on summary conviction to a fine not exceeding £1,000 or to a term of not more than six months imprisonment or to both such fine and imprisonment;
- (b) on conviction on indictment to a fine or to a term of not more than five years imprisonment or to both such fine and imprisonment.

13. Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or misrepresentation on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly, and shall be disqualified from giving advice or information to which section 5 of this Act applies.

Offences by bodies corporate.

14. For the removal of doubt it is hereby declared that nothing in this Act shall affect the operation of section 3 of the principal Act, which relates to the application thereof to visiting forces.

Saving for section 3 of principal Act.

15. (1) The Secretary of State may make regulations for any purpose for which regulations may be made under the principal Act as amended by this Act or under this Act and generally for the purpose of carrying into effect the principal Act as so amended and this Act.

Regulations.

(2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

16. (1) This Act may be cited as the Abortion (Amendment) Act 1975 and the principal Act and this Act may be cited together as the Abortion Acts 1967 and 1975.

Short title
citation
and extent.

(2) This Act does not extend to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 6.

CONDITIONS FOR USE OF APPROVED PREMISES

1. (1) The premises shall be open for inspection at all times by persons appointed for the purpose by the Secretary of State.

(2) No advertisement other than an approved advertisement shall be displayed either outside or inside the premises.

(3) The premises must be satisfactory as regards size, lay out and the provision of facilities to ensure privacy.

(4) There must be available on the premises or at some other approved premises satisfactory arrangements for pregnancy testing.

(5) A registered medical practitioner must be available on the premises for consultation with any person seeking treatment for termination of pregnancy or advice on such treatment.

(6) Any fee charged for giving treatment or advice at the premises shall include the fee for any such consultation.

(7) Records must be kept showing -

- (a) identity of person interviewed or treated;
- (b) result of interview or treatment;
- (c) details of fees charged;
- (d) copies of receipts for payment;

and such records must be available for inspection by an approved person.

(8) The books of account must be available for inspection by an approved person.

2. For the purposes of this Schedule -

'advertisement' means any notice indicating the nature of the business carried on on the premises and any notice indicating that any treatment, facility, service or product may be obtained on the premises;

'approved' means approved for the purposes of this Schedule by the Secretary of State.

SCHEDULE 2

Section 8.

CONDITIONS FOR EXPERIMENTS ON FOETUS AND FOETAL MATERIAL

1. An experiment may only be carried out on a dead foetus and no experiment shall be carried out on any foetus which weighs more than 300 grammes. The decision that a foetus is in a category which may be used for experimentation or research shall rest with the medical attendants present at its birth and any intending research worker shall be excluded from any such decision.
2. Any experimentation on foetus shall be carried out in departments directly related to a hospital and such experimentation shall not take place without the direct authority of the Ethical Committee established for the purposes of the hospital.
3. An Ethical Committee shall not permit research of any kind on foetus unless they have first satisfied themselves -
 - (a) on the validity of the research;
 - (b) that the required information cannot be obtained in any other way; and
 - (c) that the investigators authorised to carry out the research have the necessary facilities and skill.
4. No dissection of a foetus or experimentation on foetus or foetal material shall take place in the operating theatre or place of delivery.
5. No person shall accept or demand money in exchange for a foetus or foetal material.
6. Full records of experiments and the source of the foetus and the disposal of the remains of the foetus shall be kept by the institution or person carrying out research.
7. Where a foetus is viable following the termination of a pregnancy no experiment shall be carried out on it which is inconsistent with treatment necessary to promote its life.
8. No person shall administer drugs or carry out any procedures to or on a pregnant woman prior to termination of her pregnancy with the intent of ascertaining the harm that they might do to the foetus.

(14) William Benyon's Bill

A

B I L L

TO

Amend the Abortion Act 1967 and to make further provision with respect to the termination of pregnancy and matters consequential thereto.

A.D. 1977

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Section 1(1) of the principal Act shall not make lawful treatment for the termination of pregnancy in any case where the woman has been pregnant for not less than 20 weeks or such other period as the Secretary of State may by order determine, unless the two registered medical practitioners referred to in section 1 of the principal Act are of the opinion, formed in good faith -

Treatment prohibited in certain cases.

- (a) that the pregnancy has lasted for less than 20 weeks; or
- (b) that the pregnancy has lasted for less than 24 weeks and there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or
- (c) that the treatment is necessary either to save the life of the pregnant woman or to prevent grave permanent injury to her physical or mental health.

(2) The Secretary of State shall not make an Order under this section unless a draft of the order has been approved by resolution of each House of Parliament.

2. After subsection (1) of section 1 of the principal Act there shall be added:-

Qualification of registered medical practitioner

'(1A) At least one of the two registered medical practitioners referred to in subsection (1) of this section must be a registered medical practitioner of not less than five years' standing.

(1B) A registered medical practitioner shall not be eligible to form an opinion for the purposes of

subsection (1) of this section if he -

- (a) is a partner of the other registered medical practitioner; or
- (b) is employed by the other registered medical practitioner; or
- (c) obtains or is able to obtain financial benefit from a place approved by the Secretary of State for the purposes of this section or to which section 7 of the Abortion (Amendment) Act 1977 applies, if the other registered medical practitioner obtains or is able to obtain financial benefit from the same place.'

3. (1) Notwithstanding anything in section 2 (Notification) of the principal Act or in any regulations thereunder, any person who has terminated a pregnancy shall give notice of the termination to the regular medical practitioner of the woman whose pregnancy has been terminated by him, unless he is the regular medical practitioner of the woman; provided that the consent of the woman has been sought and obtained in accordance with the regulations made by the Secretary of State.

Notification
of term-
ination of
pregnancy.

(2) Any person who contravenes the provisions of the foregoing subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(3) Regulations under subsection (1) of this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

4. After subsection (3) of section 2 of the principal Act there shall be added:-

Time limit
for commence-
ment of
proceedings.

'(3A) Summary proceedings in respect of any offence under subsection (3) of this section may, notwithstanding anything in the Magistrates' Courts Act 1952, be commenced at any time not later than three years from the date of commission of the offence.'

5. (1) In subsection (1) of section 4 of the principal Act, after the word 'objection' where it first occurs, there shall be added 'on religious, ethical or other grounds'.

Conscientious
objections
to partici-
pation in
treatment.

(2) The proviso to subsection (1), and subsection (3), of section 4 of the principal Act are hereby repealed.

6. (1) It shall be an offence -

Licensing.

- (a) for the occupier of any premises to use them for any of the purposes mentioned in subsection (7) of this section, or to permit them to be so used, unless he holds a licence in relation to those premises under this section; or
- (b) for any person other than the occupier to use any premises for any of the purposes mentioned in subsection (7) of this section unless the occupier holds a licence in relation to those premises under this section.

(2) An application for a licence in relation to premises under this Act shall be made to the Secretary of State, and shall be accompanied by a fee.

(3) Subject to subsection (4) below, the Secretary of State shall, on receiving an application under subsection (2) above, issue to the applicant a licence in respect of the premises.

(4) The Secretary of State shall refuse to issue a licence to an applicant in relation to premises if he is satisfied -

- (a) that the applicant, or any person employed or proposed to be employed by the applicant at the premises, is not a fit person (whether by reason of age or otherwise) to carry on or be employed at such premises; or
- (b) that, for reasons connected with situation, construction, state of repair, accommodation, staffing or equipment, the premises are not, or any premises used in connection therewith are not, fit to be used for any of the purposes mentioned in subsection (7) below; or
- (c) that the premises, or any premises used in connection therewith, are used, or proposed to be used, for purposes which are in any way improper or undesirable in the case of such premises; or
- (d) that the standard of medical advice offered at the premises in relation to the use in respect of which a licence under this section is required, is not likely to be adequate in the circumstances; or
- (e) that, in the case of the applicant, the occupier of the premises or any person associated or proposed to be associated with the use in respect of which a licence under this section is required on those

premises, there is a financial arrangement or other agreement with persons associated with a place approved for the purpose of section 1 of the principal Act.

(5) Subject to subsection (6) below, a licence under this section shall remain in force for such period not exceeding 13 months as may be fixed by the Secretary of State in each case, and may be renewed for a period not exceeding 13 months at any one time.

(6) The Secretary of State may at any time refuse to renew a licence under this section in relation to premises -

- (a) on any ground which would entitle him to refuse an application for a licence under this section in relation to those premises;
- (b) on the ground that the applicant for the licence has been convicted of an offence against the provisions of the principal Act or this Act, or on the ground that any other person has been convicted of such an offence in respect of those premises;
- (c) on the ground that the applicant has been convicted of an offence against regulations made under section 7 below.

(7) The purposes for which a licence is required under this section are -

- (a) the provision for payment of consultation with a medical practitioner who is prepared to sign certificates under the Abortion Regulations and who is prepared subsequently to terminate the pregnancy of the person attending the consultation;
- (b) the provision for payment of an advisory service in relation to treatment for the termination of a pregnancy;
- (c) the provision for payment of a service of testing whether a woman is pregnant.

(8) Nothing in this section shall require premises to be licenced because of the use of those premises -

- (a) by a registered medical practitioner for the purposes of his general practice; or

(b) as a hospital vested in the Secretary of State under the National Health Service Acts; or

(c) in accordance with an approval of the Secretary of State under section 1 of the principal Act.

(9) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding £1,000 and to a fine not exceeding £100 for each day on which the offence is continued after conviction thereof.

7. (1) The Secretary of State shall make regulations in relation to the use of premises for any of the purposes to which section 6 above applies, and in relation to places approved by him for the purposes of section 1 of the principal Act.

Regulations relating to premises.

(2) Regulations under this section shall prescribe the fee to accompany an application under section 6 above, and may be made -

(a) with respect to the facilities and services to be provided in such premises;

(b) with respect to the licensing of premises under section 6 above, and in particular with respect to -

(i) the making of applications for a licence;

(ii) the refusal of a licence; and

(iii) appeals to magistrates' courts against refusals to issue or renew licences;

(c) with respect to the keeping of records relating to premises licenced under section 6 above, and with respect to the notification of events occurring in such premises;

(d) with respect to entry into and the inspection of premises used or reasonably believed to be used for any of the purposes mentioned in section 6(7) above;

(e) providing that a contravention of or failure to comply with any specified provision of the regulations shall be an offence against the regulations.

(3) Regulations made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

8. (1) Subject to subsection (7)(a) of this section, after a person is accused of an offence under an Act to which this section applies, no matter likely to lead members of the public to identify in relation to that accusation any complainant or witness -

Restriction
on public-
ation of
identity.

- (a) who has had an abortion which is the subject of proceedings; or
- (b) who has been advised about an abortion and the advice is the subject of proceedings;

shall either be published in a written publication available to the public or be broadcast except as authorised by a direction given in pursuance of this section.

(2) If, before the commencement of a trial at which a person is charged with an offence under an Act to which this section applies, he applies to the court for a direction in pursuance of this subsection and satisfies the court -

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given;

the court shall direct that the preceding subsection shall not apply in relation to the complainant or witness referred to in the preceding subsection.

(3) If a person who has been convicted of an offence under an Act to which this section applies and gives notice of appeal to the appellate court against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction in pursuance of this subsection and satisfies that court -

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given;

the appellate court shall direct that subsection (1) of this section shall not apply in relation to any complainant or any witness referred to in subsection (1) of this section and specified in the direction.

(4) If any matter is published or broadcast in contravention of subsection (1) of this section, the following persons, namely -

- (a) in the case of a publication, in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(5) For the purposes of this section a person is accused of an offence under an Act to which this section applies if -

- (a) any information is laid alleging that he has committed such an offence; or
- (b) he appears before a court charged with such an offence; or
- (c) a court before which he is appearing commits him for trial on a new charge alleging such an offence; or
- (d) a bill of indictment charging him with such an offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in this section and section 12(4) of this Act to an accusation alleging such an offence shall be construed accordingly; and in this section -

'a broadcast' means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

'complainant' in relation to a person accused of an offence under an Act to which this section applies or an accusation alleging such an offence, means the woman against whom the offence is alleged to have been committed; and

'written publication' includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(6) Nothing in this section -

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging an offence under an Act to which this section applies of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or
- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast;

and a direction in pursuance of this section does not affect the operation of subsection (1) of this section at any time before the direction is given.

(7) The Acts to which this section applies are the 1861 c.100.
Offences Against the Person Act 1861, the Infant Life 1929 c.34.
(Preservation) Act 1929, the principal Act or this Act.

9. If a chief officer of police, or a person authorised by him in that behalf, applies to a judge of the Crown Court and satisfies the judge - Court may order inspection, etc.

- (a) that investigations are being carried out with a view to the instigation of proceedings in relation to illegal abortion under the Offences Against the Person Act 1861, the Infant Life (Preservation) Act 1929, the principal Act or this Act; and
- (b) that there is reason to believe that such investigations would be assisted by information contained in any register or other book kept by a body to which section 7 of this Act applies;

the judge may order that the applicant may inspect and take copies of any entries in any register or other book of the body specified in the order.

10. References in the principal Act and in this Act to termination of pregnancy shall include acts done with intent to terminate a pregnancy if such exists. Meaning of 'Termination of pregnancy'.

11. Where an offence under the Offences Against the Person Act 1861, the Infant Life (Preservation) Act 1929, the principal Act or this Act which has been Offences by bodies corporate.

committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or misrepresentation on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

12. (1) This Act, except section 6, shall come into force on the 1st January 1978 or at the expiration of six months beginning with the date on which it is passed, whichever is the later.

Commence-
ment.

(2) Section 6 of this Act shall come into force at the expiration of six months beginning with the date of the coming into force of the rest of this Act.

(3) Section 8 of this Act shall not have effect in relation to an accusation which is made before the coming into force of this Act.

13. (1) This Act may be cited as the Abortion (Amendment) Act 1977, and this Act and the principal Act may be cited together as the Abortion Acts 1967 and 1977.

Citation,
interpret-
ation and
extent.
1967 c.87.

(2) In this Act, 'the principal Act' means the Abortion Act 1967.

(3) This Act does not extend to Northern Ireland.

APPENDIX II

ALRA's Draft Bill, 1977

ALRA's Draft Bill 1977

A bill to make lawful the termination of pregnancy by qualified persons subject to the provisions of the Infant Life (Preservation) Act 1929, and for connected purposes.

1. Subject to the provisions of the Infant Life (Preservation) Act 1929, it shall not be an offence for any qualified person to terminate or procure termination of a pregnancy at the request of the woman whose pregnancy is to be terminated.
2. It shall not be an offence for any registered medical practitioner to terminate or procure the termination of a pregnancy, subject to the provisions within the Infant Life (Preservation) Act 1929, when he or she is of the opinion formed in good faith that the operation is necessary to save the life or to prevent injury to the physical or mental health of the pregnant woman.
3. In section 4 of the National Health Service Reorganisation Act 1973 after the words 'and the supply of contraceptive substances and appliances' there shall be inserted the words 'and to ensure that adequate facilities and qualified personnel are made available for the termination of pregnancies as prescribed by law'.
4. For the avoidance of doubt, it is hereby declared that where an unqualified person terminates or procures the termination of pregnancy it shall be an assault upon the woman concerned irrespective of her consent.
5. (i) In section 1 (ii) of the Infant Life (Preservation) Act 1929, the words 'or for an offence under section 58 of the Offences Against the Person Act 1861 (which relates to administering drugs or using instruments to procure abortion)' and 'or of an offence under the said section 58' should be deleted.
 (ii) Section 3(i) of the Infant Life (Preservation) Act 1929 is hereby repealed.
6. (i) In Section 3(i) of the Criminal Justice Act (Northern Ireland) 1945 the words 'or ~~for~~ an offence under section 58 of the Offences Against the Person Act 1861 (which relates to administering drugs or using instruments to procure abortion)' and 'or for an offence under the said section 58' shall be deleted.
 (ii) Section 20(ii) of the Criminal Justice (Northern Ireland) Act 1945 is hereby repealed.
7. (i) The Abortion Act is hereby repealed.

8. (i) This Act may be cited as the Abortion Act 1977.
- (ii) This Act extends to Northern Ireland.
- (iii) In this Act qualified person means -
- (a) A registered medical practitioner
 - (b) A state registered nurse.
- (iv) This Act shall come into force at the expiration of the period of three months beginning with the date on which it was passed.

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